

The Scottish Public Services Ombudsman Act 2002

Investigation Report

UNDER SECTION 15(1)(a)

SPSO

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Case ref: 201508474, The City of Edinburgh Council

Sector: Local government

Subject: Finance / Local housing allowance and council tax benefit

Summary

Mr C is the landlord for his brother (Mr A), who receives housing benefit. Mr A has an injury which means he needs support to manage his affairs. Because of this, the housing benefit is paid directly to Mr C as landlord, (and Mr C is authorised to communicate directly with the council about this). Mr A's housing benefit payment was delayed on three occasions without notice, with the longest delay being about five weeks.

When Mr C complained after the second delay, the council agreed to monitor Mr A's account so they could notify Mr C of any future delays. However, this monitoring was stopped after three months, and Mr A's payment was again delayed without notice. Mr C complained to the council, who apologised that he was not told that the monitoring of Mr A's account had stopped. The council said they had found a more efficient way to monitor Mr A's account, for a further six months. However, Mr C was not satisfied with the council's response and brought his complaint to SPSO.

In response to SPSO's enquiries, the council explained that the Department of Work and Pensions (DWP) use a system of automated notifications to notify the council electronically of any changes to a benefit claimant's records (such as contact details or income details). Where a notification is received that could result in a change in benefit entitlement, the council's system automatically suspends the claimant's benefit payment (to stop any payments being made until the change has been reviewed). Council officers then review these notifications and either lift the suspension (if the change does not affect the claimant's entitlements) or contact the claimant to request further information or make changes, if necessary. The council said Mr A's benefit was automatically suspended on three occasions (each time due to one benefit being stopped, with a different benefit starting in its place). As these changes did not affect Mr A's payment, the council unsuspended the payment each time (once they had an opportunity to review it). The council said the delay was due to the workload they had at the time, with each automated suspension being dealt with in turn.

We asked why the council did not notify claimants when their benefits were suspended in this way. The council said this was because, in most cases, the automated suspensions are removed without any impact on benefit claimants, so it is not necessary to warn people about a possible delay in payment. The council said they receive thousands of automated notifications every month, and notifying every claimant of a suspension that may be lifted before the payment is due would create unnecessary confusion and contact with the council, which would divert resources from dealing with the suspensions as quickly as possible. The council also said their system would not allow them to send a letter that would fully explain the situation in appropriate circumstances, so they would need to do this manually (which would impact on resources). The council said that, since this complaint, they had improved their processes to minimise the chance of a payment being delayed.

After investigating these matters, we upheld Mr C's complaint. We found that the council was not complying with guidance from the DWP that requires decision makers to notify claimants in writing when a decision is made to suspend their benefit. We did not consider the council had a reasonable explanation for not complying with this guidance, as the numbers they gave us about the average number and length of automated suspensions did not support their claim that the risk of a payment being delayed was small. The council was not able to provide information on the actual numbers of people whose benefits are delayed, or for how long, as they do not monitor this. We were particularly concerned that the council's system of automated suspensions did not include mechanisms for protecting vulnerable people or considering hardship at the time the suspension is made. It was also not clear that the council is giving appropriate consideration to the individual circumstances of each case when they make a decision to suspend a payment under the automated system.

Redress and Recommendations

The Ombudsman's recommendations the Council:	<i>Completion date</i>
(i) apologise to Mr C for the failings our investigation found; and	24 June 2017
(ii) amend their processes to ensure that individuals are notified at the time a suspension is applied to their benefit (as required by the DWP Guidance).	24 August 2017

Who we are

The Scottish Public Services Ombudsman (SPSO) investigates complaints about organisations providing public services in Scotland. We are the final stage for handling complaints about the National Health Service, councils, housing associations, prisons, the Scottish Government and its agencies and departments, the Scottish Parliamentary Corporate Body, water and sewerage providers, colleges and universities and most Scottish public authorities. We normally consider complaints only after they have been through the complaints procedure of the organisation concerned. Our service is independent, impartial and free. We aim not only to provide justice for the individual, but also to share the learning from our work in order to improve the delivery of public services in Scotland.

The role of the SPSO is set out in the Scottish Public Services Ombudsman Act 2002, and this report is published in terms of section 15(1) of the Act. The Act says that, generally, reports of investigations should not name or identify individuals, so in the report the complainant is referred to as Mr C. The terms used to describe other people in the report are explained as they arise and in Annex 1.

Introduction

1. Mr C complained to the Ombudsman that the City of Edinburgh Council (the Council) suspended a housing benefit payment to his tenant, without notifying either the tenant or Mr C (although they told him on a previous occasion they would notify him if it happened again). The complaint from Mr C I have investigated is that the Council unreasonably failed to notify Mr C that his tenant's housing benefit would not be paid (*upheld*).

Investigation

2. In order to investigate Mr C's complaint, my complaints reviewer considered the documentation he provided and contacted him to check our understanding of the complaint. My complaints reviewer also obtained a copy of the Council's complaints file, and sought their comments on the complaint, as well as making a number of further enquiries to clarify their processes. My complaints reviewer also met with staff from the Council at their request, to give them an opportunity to provide further evidence. In considering the complaint, we have taken into account the Department of Work and Pensions (DWP)'s Guidance on Housing Benefit and Council Tax Benefit. In this case, we have decided to issue a public report on Mr C's complaint because we consider there is a wider public interest in the failings we found in the Council's system of automated suspension of benefits.

3. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked.

Complaint: The Council unreasonably failed to notify Mr C that his tenant's housing benefit would not be paid

Background

4. Mr C is the landlord for his brother (Mr A), who receives housing benefit. Mr A has an injury which means he needs support to manage his affairs. Because of this, the housing benefit is paid directly to Mr C as landlord (and Mr C is authorised to communicate directly with the Council about this).

5. Mr A's housing benefit has been suspended on three occasions, most recently on 7 December 2015 (reinstated on 6 January 2016). The longest suspension was in June/July 2014, when Mr A's payment was delayed for over five weeks. Mr C complained about this on the second occasion, and the Council agreed to monitor Mr A's account on a daily basis so they could notify Mr C of any additional delays. However, this monitoring was stopped after

three months, and Mr C was not notified when the December 2015 payment was delayed.

Mr C's complaint to the Council

6. On 4 January 2016 Mr C emailed the Council to complain about the most recent delay, and he also called the Council on 5 January 2016. The Council emailed Mr C on 12 January 2016 to respond to his complaint. They apologised that he had experienced this issue again, and advised that the payment had now been released. The Council explained that the delay was due to an automatic suspension being placed on the claim as a result of information received from the DWP. The Council acknowledged that they had previously agreed to monitor Mr A's account. They said they had carried this out over a three month period, but then 'reduced the checking frequency'. The Council said they had now decided on a more efficient procedure, whereby Mr A's claim would be placed on a shortlist with a few others, which would be checked one to two days before the monthly housing benefit run, so that if there were any changes they could contact Mr C to make him aware of the situation. The Council said this new checking procedure had been adopted by all Income & Benefit staff within the service area, and should guarantee an improved service delivery.

7. Mr C responded to the Council the same day, noting that they had previously promised to notify him of any non-payments in advance, but it appeared this only lasted three months. Mr C said he was not looking to be treated differently to anyone else, and there should be something in place for all landlords to ensure notification of all delayed payments. He asked the Council to move his complaint on to stage two of the process, as he did not consider the issue had been properly addressed.

8. The Council sent Mr C a response to his stage two complaint on 26 January 2016. The Council again explained that Mr A's housing benefit had been automatically suspended in response to a notification of a possible change in his entitlement, pending manual consideration by a processing officer. The Council said steps had been taken in an attempt to deal with these types of processes (automated suspensions) in a quicker and more efficient manner, such as having a team of officers dealing purely with these processes. However, they said that due to the volume of processes received, it was not always possible to deal with them in full before the monthly housing benefit payments were issued.

9. The Council also said they had considered the possibility of sending out letters to all parties concerned, but decided not to do this, as it was recognised that this may actually create more unnecessary contact with their offices, and thus slow down the processing. The Council said the number of claims being repeatedly suspended were miniscule in comparison to the number of claims dealt with on a monthly basis, and as such, their decision not to advise everyone of the suspension of their claim on the day of suspension would remain in place.

10. The Council again explained the new process that had been put in place to monitor Mr A's payments. They said they could not guarantee that the account would not be suspended in future, but this should not be for more than three days (unless they needed more information from Mr A), and they said Mr C would be informed of the suspension.

Mr C's complaint to us

11. Mr C brought his complaint to us on 27 January 2016. He said he was unhappy with the Council's response, as it followed years of broken promises to notify him about suspension of the payment. He said he did not believe the Council's new process would address the problem, as he said one of the Council employees had told Mr A during a telephone call that, when staff speak to landlords, they 'tell them exactly what they want, just to get them off the phone'. Mr C emphasised that he was not complaining about the suspension, but simply wished to be notified in advance if the payment would be delayed. Mr C said he did not want any special treatment, simply for all landlords to be treated fairly.

12. Mr C said the outcome he was looking for from his complaint was for an improved system where tenants and landlords in his situation would be advised when housing benefit would not be paid on time. Mr C was very clear that he did not want apologies or compensation, 'just fairness'.

The Council's response (enquiry one)

13. We asked the Council for their comments on the complaint, a copy of their complaint file, and any relevant policies and procedures (including any relevant national policies or guidance). In response to our initial enquiry, the Council explained that they had upheld Mr C's complaint. They agreed that they had failed to notify Mr C that Mr A's housing benefit would be delayed on this

occasion, and they accepted this was unreasonable, as they had previously undertaken to monitor this and notify Mr C of any delays. However, the Council did not consider any additional outcome or explanation would be possible (other than the new monitoring system they had put in place for Mr A).

14. The Council explained that the DWP use a system of automated notifications (ATLAS) to notify the Council of any changes to a benefit claimant's records (such as contact details or income details). In such cases, the Council said they were required to suspend payment of the benefit until the notified changes could be reviewed and any necessary updates to their payment systems completed. The Council said this was required in accordance with DWP and Audit Scotland requirements, to prevent an overpayment of housing benefit, which could lead to the Council being financially penalised. The Council said that customers were not informed of the automated suspension because:

'[the suspensions] tend to be removed without any impact on benefit payments, and they are dealt with as a priority to reduce the risk of customers not receiving benefit when they should.'

15. However, given the unusually high number of suspensions experienced by Mr A, the Council said they took the exceptional action of monitoring his account. They explained that, given they receive over 1,000 of these processes per week, it would not be possible to provide this for everyone. The Council said the normal monitoring period is between three and six months. The Council accepted that Mr C should have been made aware of the fact that the monitoring would be a short-term arrangement, and should have been told when the monitoring ceased. The Council said they had issued Mr C an apology letter, which would address the importance of notifying members of the public if a change is made to an agreed process by the Council.

16. The Council subsequently sent us a copy of this apology letter, which apologised again, and explained that they would continue the new monitoring process for a further six months.

17. In response to our request for any relevant policies and procedures, the Council provided a copy of their 'ATLAS Guidance' which sets out the technical processes for staff to follow. The policy includes a section entitled 'suspension letters', which states:

'ATLAS will not issue a suspension letter to the claimant or landlord. There are two reasons for this: the reason would show as ATLAS with no explanation, and ATLAS will send us notification that the customer has died – we can't filter these out to stop a suspension letter being issued. Council tenants get a letter produced from the SFC/housing rents side advising that the full rent is due.'

SPSO's further enquiries - enquiry two

18. My complaints reviewer asked the Council to confirm our understanding of the delays to Mr A's payments. The Council confirmed that Mr A's housing benefit had been automatically suspended three times, due to notification of terminations of specific state benefits. The Council explained that each time one type of benefit had ended, but another had been awarded in its place.

19. We also asked the Council for a further explanation of how the process worked to ensure that automated suspensions were dealt with as a priority, and how the process was applied in relation to this case. In particular, we asked why the suspension of Mr A's housing benefit was not identified, updated and unsuspended in time for the housing benefit payment, as the Council said that would be the normal process. The Council said that suspended claims generally are treated with the highest priority in their workflow, and they have a specialist team working specifically for automated suspensions caused by ATLAS notifications, which is supplemented at peak times where possible. However, the Council said that the volume of this work varied significantly, and this was unpredictable (as the notifications were generated by changes in state benefits administered by DWP). The Council said there was a relatively low risk of a payment being delayed due to an automated suspension. In relation to Mr A's housing benefit, the Council said the payment was delayed due to the volume of requests, which were dealt with in the order in which they were received.

SPSO's further enquiries - enquiry three

20. My complaints reviewer asked the Council to provide evidence to support their statement that the number of payments affected each month was 'relatively low' (such as the numbers of claimants affected and timeframe for dealing with these). The Council provided a table with the numbers of suspended claims per month and average suspended days for each payment for the period June 2015 to January 2016. The number of housing benefit claims suspended by ATLAS in a given month ranged from 1,810 (November 2015) to 3,552 (January 2016),

while the average days suspended ranged from 17.39 (January 2016) to 27.2 (October 2015).

21. My complaints reviewer also noted that the Council had said it would not be practical to inform all claimants of the suspension, as most of the suspensions would be lifted prior to payment falling due (so the claimant or landlord would never be aware of the suspension). We asked why it would not be possible to generate a letter or communication shortly before the housing benefit run each month, to notify only those claimants and landlords with outstanding suspensions. The Council said they had investigated the possibility of producing a system-generated letter, but this would not be possible within their current systems. Therefore, issuing a letter to affected landlords and claimants would require them to generate a report each month, with a letter or email to be created manually and issued to each claimant or landlord. The Council said that, due to the resources this would take, they had determined it would be better to focus on processing the ATLAS cases. The Council also noted that the suspension could be removed prior to the letter being received, which would result in confusion and unnecessary contact for the claimant/landlord.

22. My complaints reviewer noted that the monitoring arrangements put in place by the Council was limited to a few specific claimants, and would only be in place (for Mr A) for six months. We asked whether the Council had any plans to address this issue more broadly or in the longer term. The Council said they had one of the highest levels of automation of ATLAS processes, with the only processes resulting in automated suspensions being those which could result in overpayment. They said it remained their priority to process the suspensions as quickly as possible.

23. We also asked whether the Council had any processes in place to ensure vulnerable individuals were protected within the automated suspension process (aside from the short-term monitoring they had described). The Council said they have no way of identifying vulnerable individuals from the information received via ATLAS, so they were unable to put any additional processes in place to ensure vulnerable individuals receive additional protection. The Council explained that they receive a significant number of automated ATLAS suspensions on a monthly basis, and based on their current staffing and system resources the most effective method of removing the suspension was to process the suspension activities within the system. They said that,

unfortunately, providing additional protection to vulnerable individuals would increase the average period of suspension due to the resourcing diversion required.

SPSO's further enquiries - enquiry four

24. My complaints reviewer noted that the figures provided by the Council appeared to indicate that the average processing time for a suspension was over 20 days, with the chances of a 20 day suspension claim running into the next payment fairly high (about two in three). My complaints reviewer asked the Council if we had interpreted this correctly, and if so, for further explanation of why they considered the risk of a payment being delayed to be relatively low.

25. The Council confirmed that this interpretation was correct, and provided a further table including suspension data for the previous 12 months (showing a similar pattern to the six month table). The Council said they had based their process of automated suspensions on guidance from the DWP. The Council reiterated that, until the ATLAS notification was manually reviewed, they were not in a position to determine if the change in circumstances will result in an increase or decrease in housing benefit. They said there was, therefore, a risk that, in the previous 12 months, there was the potential for 29,462 overpayments to have been created if the claims had not been suspended, and this was a risk the Council could not accept. They noted that the creation of overpayments for already financially challenged citizens would be inappropriate, and for this reason they considered it absolutely necessary to mitigate any possibility of this happening. The Council noted that it was not possible to determine at the point of suspension whether the overpayment would be low or high, and hence they erred on the side of caution.

26. My complaints reviewer also asked whether the Council had actual data on the numbers of people whose housing benefit payments were delayed each month, but they said it was not possible to produce an accurate report on this from their system.

SPSO's further enquiries - enquiry five

27. My complaints reviewer noted that the Council said their systems were based on DWP guidance, and asked for a copy of this guidance. The Council provided a link to the DWP Housing Benefit and Council Tax Benefit Guidance

(Part C)¹ and confirmed that the relevant section was part C8: Suspension and Termination of Benefits (the DWP Guidance). The Council noted that this was based on Regulation 11 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001.

Relevant regulations and guidance

28. Regulation 11 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 provides that an authority may suspend housing benefit in prescribed circumstances, including where:

'it appears to the relevant authority that an issue arises whether the conditions for entitlement to housing benefit or council tax benefit are or were fulfilled'.

29. The DWP Guidance states:

'[8.02] The Decision Maker (DM) should always bear in mind whether hardship, particularly the risk of eviction, will result from their decision when considering suspension of benefit, either wholly or in part. This applies both to circumstances when the DM is considering an immediate suspension or when the claimant has been asked to provide information. If a suspension is appropriate it should generally be for as short a period as possible.

...

[8.29] If the DM decides to suspend [Housing Benefit], the claimant should be informed in writing. The letter should state the date of and the reason for the suspension, together with what, if anything, the claimant needs to do to resolve the situation.

Additional enquiries (enquiries five and six)

30. My complaints reviewer noted that the Council's automated process of suspension did not appear to comply with the paragraphs set out above, as they did not notify the claimant in writing of any decision to suspend, and did not consider hardship in relation to each individual decision. We invited any comments the Council may have on this. We also noted that the DWP Guidance appeared to expect the Council to make individual discretionary decisions about each suspension of Housing Benefit, and asked if there was

¹ <https://www.gov.uk/government/publications/housing-benefit-and-council-tax-benefit-guidance-part-c>

any guidance or legislation that provided for the Council to apply automatic suspensions without considering the individual circumstances of each case.

31. The Council again clarified that they do not automatically suspend payments in relation to all notifications, but only those which could result in an overpayment (which they said can be of greater frustration to customers and carry an additional financial burden for them). They said they had a process in place to manually assess the change as quickly as possible, normally within a few days. The Council said they had recently streamlined their working practices to prioritise the processing of suspension claims (although this does not appear to be a recent change, as the Council's response to our first enquiry stated that these suspensions are treated with the highest priority in their workflow).

32. In relation to the requirement to notify claimants in writing of any suspension decision, the Council said that customers receive an email or telephone call from an officer at the time the suspension is reviewed. The Council said that, if they issued an automatic system-generated suspension letter at the time of the actual suspension, the reason on the letter would simply show as an 'ATLAS notification' with no explanation of the content of this. They said this was of particular concern, as ATLAS notifications can include situations where an individual has died, so if the Council automatically issued these letters, they could be issued to deceased individuals, which would be an unacceptable outcome.

33. In relation to hardship, the Council said that they did not have sufficient information at the time of automatic suspension to determine whether hardship was likely to occur as a result of suspension. However, they noted that a council officer would have ownership of the suspension activity (as soon as it was reviewed), and the customer would have the opportunity to express issues with hardship at this point. The Council provided a copy of their internal guidance manual on 'Suspending Council Tax Benefit / Housing Benefit', and noted this advised staff to take hardship into account when processing an individual's benefit claim. This guidance states:

'It is now Revenues & Benefit Policy to suspend all claims whilst awaiting a response to our request for further information, where there is a reasonable expectation that an overpayment may occur, unless it is clear that this will cause undue hardship to the claimant.'

The Council said that, if a claimant contacted them to advise they were suffering hardship, this would be taken into account and a decision made on whether the suspension would be removed.

34. The Council also said they had approached other local authorities about their processes, and this confirmed that these authorities automatically suspend ATLAS notifications in a similar manner. The Council provided a summary of feedback from four councils. Three of these indicated that they generated a letter to advise the claimant of the suspension (this is not clear from the fourth, although only a very short overview is given).

35. Finally, the Council noted that the DWP Guidance was last updated in 2009, whereas ATLAS was introduced after this date (July 2011 for the Council). The Council provided a document entitled 'ATLAS Good Practice' produced by the DWP to help authorities with streamlining the processing of ATLAS notifications. This included a section on 'batch processing', which states:

'The batch processing functionality that your IT system can complete will vastly reduce the number of notifications that require any manual intervention. Examples of batch processing completed include all HMRC notifications (except terminations) and new claim notifications to a passporting benefit. This list is by no means exhaustive and your [local authority] will be able to complete many notifications without any manual intervention ... some [local authorities] have indicated that the termination notifications can still be batch processed to bulk suspend.'

36. In relation to queries on how to action certain types of notification, the ATLAS Good Practice guide also states:

'It should be stressed that no changes to legislation or guidance have been made for the implementation of ATLAS. If you do have any queries on how to action an ATLAS notification or need to seek clarification, please contact Housing Policy Division.'

37. The ATLAS Good Practice guide included an attachment listing ATLAS notifications to be considered for automation. In relation to claim terminations, the guide states:

'Most [local authorities] do not automate terminations as there is a strong possibility that a change has occurred in the customer's circumstances, e.g. started work, which would need to be investigated. [Local authorities]

could, however, apply partial automation to these transaction types and possibly auto-suspend, extract a report of all cases suspended as a result of this transaction type and trigger any automated (or manual) process to establish the customer's current circumstances ... Cases could then be pending to await response and if not received automatically terminate the claim.'

38. The Council considered this confirmed that they had adopted best practice, as they do not automatically terminate benefit claims (although they could have decided to this). Instead, they make a considered decision in each case, taking into account the claimant's full circumstances. They said they had refined their processes to seek to make contact with the claimant as quickly as possible to determine their particular circumstances.

Further information

39. At a late stage of the investigation, the Council asked for an opportunity to provide further relevant information. The Council said they had recently made changes to the processes in place for how they responded to ATLAS notifications. The Council said that when ATLAS notifications are received that could result in an overpayment the claim is suspended and placed in a priority work tray, which is worked on daily by two teams of staff and monitored throughout the day. The Council said that, if there is an indication that the teams will not be able to deal with all of the suspended claims by the payment run date, all other benefit teams will provide extra resource to ensure that this happens. The Council said that, as an example, in November 2016 there were 4,844 ATLAS processes received, with only 25 cases remaining to be allocated on the day of payment (and these were allocated that day for immediate action).

40. The Council said that, if they are unable to clear the suspended claims on time for the monthly payment run, all affected customers will receive either a telephone call or an email advising of the suspension and the action they need to take to release their benefit payment. The Council said this meant contact was only made with claimants if they need to know their claim is suspended, and if the Council is unable to release the payment at the point of the payment run date.

Decision

41. Mr C complained that the Council unreasonably failed to notify him that his tenant's housing benefit would not be paid. The Council accept that they should

have notified Mr C, as they had specifically agreed to monitor Mr A's account (and had not told him they would no longer be doing so).

42. However, Mr C considered the Council should be notifying landlords as a matter of practice (and not as a special temporary arrangement for him or Mr A). This position is supported by paragraph 8.29 of the DWP Guidance, which clearly states that claimants should be informed in writing when a decision is made to suspend a claim, together with the date and the reason for this, as well as anything the claimant needs to do to resolve the situation. While the Council consider they are complying with this guidance, they have acknowledged that they do not have systems in place to notify claimants about automated suspensions at the time the automated suspension is put in place, but only once this is manually reviewed. Therefore, I have concluded that the Council is not complying with this part of the DWP Guidance.

43. The Council have explained that they do not issue letters at the time of suspension because their current systems cannot produce a system-generated letter that would be appropriate to send to tenants, so they would need to generate a separate letter (which would be an inefficient use of resources). The Council have also said that sending letters to all claimants would be impractical, as this could create confusion and anxiety for claimants and unnecessary contact for the Council, since the suspension would often be lifted before or shortly after the letter is received.

44. Essentially, the Council consider that notifying all claimants in writing at the time of suspension (as set out in the DWP Guidance) would have a significant adverse impact (both for the Council and claimants), whereas they consider the current system is unlikely to adversely impact claimants (as the suspension is normally reviewed before the payment date). However, it is difficult to determine what impact the current system has on claimants whose payments are automatically suspended, as the Council have not given clear and consistent information about the number of payments delayed, or how long the delays last on average. The Council have said the risk of a delayed payment is 'relatively low', that manual assessments are normally made 'within a few days' and that suspensions tend to be removed without any impact on benefits. However, in Mr C's case, the payment was delayed for over five weeks on one occasion. While the Council have given us data on average suspension length (which indicates that over 1,000 payments would be likely to be delayed in any given month), they later clarified that this data includes both suspensions where

the claimant has been informed and those where the claimant has not yet been informed.

45. While the Council said that they have recently improved their processes to ensure that all automated suspensions will be reviewed (and the claimant contacted if necessary) before the payment date, it is not clear that this will always happen (as the Council also said that, where this is not possible, they will contact claimants on the payment date to inform them of the situation). The number of payments being delayed does not appear to be monitored (the Council have explained that they cannot easily access data on the actual numbers of payments being delayed each month). It is also not clear how significantly this new process will change the previous situation (the Council explained in May 2016 that these processes already had the highest priority in their workflow, with a dedicated team working on these, supplemented by redeployment of other resources at peak times).

46. Taking all of this into account, I do not consider that the explanations provided by the Council are sufficient to justify a departure from the DWP Guidance in all automated suspensions. While the Council endeavour to notify claimants before the payment date, this cannot be guaranteed. Furthermore, even where a claimant is notified of the delay before the payment date, significant time may already have elapsed from the point of suspension which the claimant could have used to plan ahead, make alternative arrangements, prepare the necessary information required by the Council, or prepare a request for consideration of hardship.

47. I am particularly concerned that the Council's processes for protecting vulnerable people and considering hardship rely entirely upon being notified of any special circumstances by the claimant (as the Council have explained that they do not have enough information to consider this at the point of automated suspension). I note that paragraph 8.02 of the DWP Guidance requires a decision maker to always bear in mind whether hardship will result from their decision, when considering a possible suspension. In view of this, I consider it is essential for the Council to notify claimants when a suspension is put in place, to enable the claimant to make them aware of any special circumstances that may require to be considered before the payment is delayed. I do not accept that informing a claimant of their suspension at the point of manual review is sufficient to fulfil this requirement, as it could result in a situation where

hardship occurs before the Council has an opportunity to consider whether it is likely.

48. I also note that paragraph 8.02 refers to the decision-maker's consideration of a decision to suspend, which implies that each decision about suspension will be subject to individual consideration before the suspension is put in place. This is consistent with paragraph 8.10 and with Regulation 11 of the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001, both of which state that a decision-maker may suspend payment of Housing Benefit in limited prescribed circumstances. This position is further supported by paragraph 2.40 of the DWP's Housing Benefit Overpayments Guide: Classification and Recovery (2015), which explains at 2.40 that the decision to suspend under Regulation 11 is discretionary. This DWP guidance provides examples of decisions to suspend, in which the decision is based on an individual consideration of all of the relevant facts and circumstances. From the evidence available, it is not clear to me that the Council is giving appropriate consideration in each case as to whether the conditions for exercising a discretion to suspend are fulfilled, or whether the decision to suspend is appropriate, within their automated suspension process.

49. In view of the Council's failure to notify Mr C that his tenant's payment would not be made when it fell due, I uphold this complaint.

50. By failing to inform Mr C of the delay in payment, the Council left him unable to plan ahead to cover this, and he said he had to transfer money to cover bank charges and was left out of pocket. More significantly, Mr A (and Mr C on his behalf) was not told when a change was made to his existing entitlements that could have had serious implications for him.

51. In making this decision I would also like to note my concerns about the Council's communication with Mr C and with my office in relation to this complaint. While the Council have responded promptly to Mr C's complaint and to SPSO's enquiries (on most occasions), some responses have been inconsistent or incomplete. In their stage one response to Mr C's complaint, the Council said they had 'reduced the checking frequency' for Mr A's tenant's account after three months, whereas their letter to SPSO indicated that this was always intended to be a short-term arrangement, and the monitoring had in fact 'ceased'. While the Council acknowledged that they should have told Mr C that this was a short-term arrangement, this error was repeated in their response to

his most recent complaint: neither the stage one or the stage two responses indicated that the new monitoring arrangements would be temporary, instead they said the new system should guarantee an improved service, and that Mr C would be informed in future if a payment was delayed. This was only rectified in the further apology letter prompted by SPSO's investigation (which clarified that this solution would only be in place for six months).

52. I have noted above the inconsistent information given by the Council in relation to the volume of automated suspensions resulting in delayed payments. I am also critical that the Council failed to provide all of the relevant policies and guidance in response to our initial enquiry (in particular, the DWP Guidance, which specifically refers to notification of suspension decisions and is clearly relevant to Mr C's complaint). While I acknowledge that this complaint raised some complex issues, had the Council provided the relevant guidance in response to our first enquiry, I consider this investigation could have been concluded in a much shorter timeframe. I would like to acknowledge the time and stress caused to Mr C by the time taken to conclude this investigation.

53. In commenting on the draft of this report, the Council acknowledged that their responses could have been more helpful. They said they would ensure that any data provided in the future is relevant.

54. I am also concerned that the Council's system for suspending payments in some cases without notifying the claimant may not be consistent with relevant human rights standards, and I will send a copy of my report on this case to the Scottish Human Rights Commission for their consideration.

Recommendations

55. I recommend that the Council:	<i>Completion date</i>
(i) apologise to Mr C for the failings our investigation found; and	24 June 2017
(ii) amend their processes to ensure that individuals are notified at the time a suspension is applied to their benefit (as required by the DWP Guidance).	24 August 2017

56. The Council have accepted the recommendations and will act on them accordingly. We will follow-up on these recommendations. The Council is asked to inform us of the steps that have been taken to implement these recommendations by the date specified. We will expect evidence (including

supporting documentation) that appropriate action has been taken before we can confirm that the recommendations have been implemented.

Explanation of abbreviations used

Mr C	the complainant
the Council	the City of Edinburgh Council
DWP	Department of Work and Pensions
Mr A	Mr C's tenant, who is also his brother

Glossary of terms

ATLAS

the automated notification system used by the DWP and the Council

List of legislation and policies considered

Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001

DWP Housing Benefit and Council Tax Benefit Guidance, Part C8: Suspension and Termination of Benefits (the DWP Guidance)

DWP, ATLAS Good Practice guide

DWP's Housing Benefit Overpayments Guide: Classification and Recovery (2015)

City of Edinburgh Council, ATLAS Guidance

City of Edinburgh Council, Suspending Council Tax Benefit / Housing Benefit