

# Digest of Cases 2007/08

## Section F

### Local taxation

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#### Introduction

The Ombudsman receives many complaints about the way councils take recovery action over failure to pay council tax. Sometimes people receive summonses when they should not have done, and the consequences of that action can lead to councils granting liability orders that enable them to refer alleged debts to bailiffs. Where unjustified recovery action has been taken, the Ombudsman would expect an appropriate remedy to be provided.

## F1: Recovery action

### Dispute over amount of council tax arrears – made bankrupt over debt – failure to consider other options properly

#### The complaint

Mr P was in dispute with the council over the extent of his council tax arrears. He argued that he owed £750, but the council maintained that he owed £1,105. Although Mr P was on a low income he was not in receipt of council tax benefit which, if awarded, could have helped reduce the arrears. He complained to the Ombudsman at the actions of the council in making him bankrupt for the council tax arrears. By the end of the bankruptcy proceedings Mr P faced costs of some £38,000.

#### The Ombudsman's view

The Ombudsman did not criticise the council for not paying Mr P council tax benefit. This had arisen through Mr P's failure to co-operate with the claims process.

The Ombudsman accepted the right of the council to collect council tax arrears and the limited options available to it in Mr P's circumstances. He noted in particular that the council was not able to apply to the Department for Work and Pensions for a deduction from Mr P's incapacity benefit to repay arrears, as that benefit did not allow such a method of recovery. He noted also that the council had used bailiffs to try and collect the debt from Mr P, without success.

However, despite all of the above, the Ombudsman did not consider the council followed due process in making Mr P bankrupt. He found that the council:

- gave Mr P inadequate warning of the consequences of bankruptcy before commencing proceedings, in breach of its usual practice; and
- failed to consider properly the alternative of seeking a charging order against Mr P's home.

The Ombudsman considered that, on the balance of probabilities, had such failings not occurred, Mr P would have made an offer of repayment to the council before legal proceedings began. He said:

*“The council cannot, it seems to me, turn a blind eye to the consequences to the debtor of any recovery option it pursues. ... The dire and punitive consequences of bankruptcy, involving a multiplication of the original debt many times over and frequently incurring the loss of the debtor's home, must be a factor to be taken into account in deciding that the 'last resort' is indeed appropriate. I have seen no evidence that this relevant consideration was taken into account.”*

## The outcome

In order to put Mr P in the position that he would have been in had no maladministration occurred, the Ombudsman considered Mr P's bankruptcy should be annulled and that the council should pay for this by arrangement with the trustee in his bankruptcy.

However, the Ombudsman considered that it would not be right for Mr P to avoid liability for his debt. So the recommendation was made conditional: the council should not make any payment leading to annulment of the bankruptcy until Mr P had first entered into a binding arrangement with the council to repay £1,105 of the costs and to clear that debt as soon as reasonably practicable (repayment might be secured by way of a charge on his property).

In addition, the Ombudsman recommended the council to review its collection policy and procedures for local tax arrears in the light of this report, in order to avoid a repeat of the maladministration found in this case.

*(Report 06B16600)*



## F2: Recovery action

### Man with mental health problems – bailiffs visit – failure to consider needs

#### What happened

Mr Q has mental health problems and has difficulties managing his financial affairs. As a result he got into arrears with his council tax payments. This led to the council taking recovery action which included a visit from bailiffs a few days before Christmas.

With the help of a law centre Mr Q complained to the Ombudsman because he believed the council should have provided him with more assistance about how to manage his council tax account.

#### The Ombudsman's view

The Ombudsman's investigation found that, although the council was aware of Mr Q's medical condition, it did not pursue this with him to see if, for example, he might be entitled to council tax exemption on the grounds of severe mental impairment. The council accepted that the officer dealing with Mr Q's case had been overzealous in referring the case to the bailiffs without exploring other alternatives.

## Outcome

To remedy the injustice the council agreed to:

- write off the arrears of just over £1,000;
- apologise to Mr Q for the way it had handled his case;
- pay Mr Q £1,000 for the stress caused to him;
- assist Mr Q to apply for severe mental impairment exemption (which was subsequently awarded); and
- review its procedures so that a similar situation does not occur.

*(Case reference confidential)*



## F3: Recovery action

### Change of address – failure to update records – two summonses wrongly issued

#### What happened

When Mrs R moved she advised the council that she would no longer be liable for council tax at her former home. The council failed to act on this information and subsequently summonsed her for non payment of council tax. Mrs R contacted the council and explained the situation and the summons was withdrawn. However, the council failed to update its records and, two years later, another summons was issued.

On this occasion Mrs R attended the magistrates' court where the case was adjourned. After checking its records the council found that Mrs R was not liable. The summons was withdrawn and the account details amended.

#### Outcome

The council apologised to Mrs R and agreed to the Ombudsman's recommendation to pay her £250. This was made up of £100 for the incorrect issue of two summonses and £150 for Mrs R's distress and upset caused by the summonses and having to go to court.

*(Case reference confidential)*



## F4: Recovery action

### Payment by standing order – change of council tax account number – failure to follow up verbal explanations with written confirmation

#### What happened

Ms S paid her council tax by standing order. Unknown to her, Ms S's council's tax account number changed each financial year. As she was unaware of this at the time she did not advise her bank to change the account number to which it was making her payments. As a result, her payments went into a separate account, along with payments from other people whose account numbers were incorrect. This meant that the payments Ms S was making were not being credited to her account.

The problem came to light when the council took legal action against Ms S for non payment of council tax. Ms S visited the council offices and the officer she spoke to issued her with a new account number. However, the following April another new account number was set up and subsequent payments were again credited to a general account, rather than to Ms S's council tax account.

Ms S complained to the Ombudsman because, although she had been paying her council tax each month, she had received a summons, liability order and a letter from bailiffs.

#### The Ombudsman's view

The Ombudsman's investigation found that where people paid their council tax by direct debit the account numbers were automatically changed. At the time this did not happen with payments made by standing order, although the council has now amended this system.

The Ombudsman decided that, although Ms S had been told verbally that she had been using the wrong account, it would have been helpful if the council had followed this up by letter. In that way she would have known that the account number changed each year, and so could have taken appropriate action.

#### Outcome

The council accepted that it should not have issued the summons or obtained a liability order and Ms S should not have received a bailiff's letter. To remedy the injustice, it agreed to pay Ms S £200 for the stress and anxiety it had caused her.

*(Case reference confidential)*



## **F5: Council tax demand**

### **Council tax demand sent addressed to dead son – remedied by a sensitive response from council**

#### **What happened**

The council sent a council tax bill to Mr T which was addressed to him and to his son. Mr T's son's had recently died and the council had known this when the bill had been sent.

Mr T felt that, in addition to the apology he had received for the error, the council ought to make some sort of goodwill gesture to the family.

#### **Outcome**

The Ombudsman recommended that the council should provide a commemorative bench in the churchyard where Mr T's son was buried. The council accepted this recommendation and agreed to discuss the practicalities of providing such a bench with those responsible for the churchyard.

*(Case reference confidential)*