

Digest of Cases 2008/09

Section J

Local taxation and other public finance

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J1: Bankruptcy

Woman with untreated mental health problems made bankrupt for non-payment of council tax – failure to make proper enquiries

The complaint

Miss B suffered from untreated mental and physical health problems, and owed a council a significant sum in arrears of unpaid council tax. Her mother complained that the council had made her daughter bankrupt without giving proper consideration to her vulnerability, as she had been incapable of dealing with her own financial affairs at the time the arrears had accrued.

The Ombudsman's investigation

The Ombudsman found that the council had pursued this debt over a number of years without making adequate enquiries into the debtor's health problems to determine whether this was a suitable course of action, although she had told the council that she was terminally ill. The Ombudsman criticised the council for:


- failing to have adequate written procedures to include standard checks at an early stage as to whether the debtor's personal circumstances made bankruptcy proceedings inappropriate;
- failing to make such enquiries; and
- failing to keep a clear written record of the way its decisions were made.

However, Miss B's reclusive behaviour, while apparently a function of her mental health problems, would not have helped the council in making these enquiries, and the Ombudsman was not able to say clearly that the council would not have sought her bankruptcy even without maladministration.

Outcome

The Ombudsman was very pleased that the council had undertaken to pursue an annulment of the bankruptcy order, bearing any necessary costs itself. These were estimated at £10,000.

(Report 08 002 300)



J2: Bankruptcy

Woman with mental health difficulties made bankrupt for non-payment of council tax – failure to make internal enquiries

The complaint

Mrs G had mental health difficulties and was not capable of managing her own affairs. Her sister complained on her behalf about the council's action in making her bankrupt for non-payment of council tax.

The Ombudsman's investigation

Mrs G did not pay her council tax, and the council pursued her for this. The council's revenue team applied for a bankruptcy order against Mrs G, which was granted. They did not adequately record what checks they made and did not make any checks with the council's social care department. This would have shown that bankruptcy was not an appropriate recovery method in this case because the council's community mental health team knew of Mrs G's mental health problems.

The consequence was that the resolution of a separate legal case concerning Mrs G's financial affairs was delayed, and substantial unnecessary costs, payable by Mrs G, were incurred by a court-appointed Litigation Friend and the Trustee in Bankruptcy.

The Ombudsman's view

The Ombudsman said:

"I do not think it unreasonable for revenue officers to look beyond their own departmental information and consider a council's records as a whole."

This is in line with guidance from the Information Commissioner, which says that that information held by different authority departments can be shared as long as it not for a completely separate and unrelated purpose, and data protection principles are applied. She added:

"The failure to make effective internal enquiries led to unwarranted action against a clearly vulnerable lady."

Outcome

The Ombudsman found maladministration causing injustice and, in accordance with his recommendations, the council agreed to apply to the court to annul the bankruptcy. If the bankruptcy was annulled, the Ombudsman recommended that the council should contact credit rating agencies to advise them that Mrs G's bankruptcy had been annulled. The Ombudsman also

recommended the council to change its procedures to make stringent checks for potential vulnerability before taking action leading to bankruptcy, a charging order or committal.

(Report 07A12661)

J3: Recovery action

Council took action to recover council tax arrears despite entering into agreement regarding repayment – failed to respond to complaints about this – unnecessary bailiff’s visits

The complaint

Mrs X complained that the council:

- provided her with misleading information about payment of her council tax;
- failed to keep to an agreement for repayment of arrears; and
- failed to respond to her complaints about this.

What happened

Following some confusion about whether her son qualified as a student for council tax purposes, Mrs X received a large bill for council tax arrears. She agreed with the council to repay the arrears at a rate of £20 per month. The council confirmed the agreement in writing in January 2007. In May she asked if she could pay by direct debit and completed and returned the relevant form. The council then informed her that she could not pay the account by direct debit because it was a closed account (she had changed addresses). She completed a standing order mandate. In the confusion over methods of payment she missed May’s payment. In September the council wrote to her saying she had missed payments in April and June and threatened bailiff action. Mrs X made a complaint saying she had missed only May’s payment and this was due to misleading information about the direct debit. She enclosed a postal order for the £20.

The council did not reply to her complaint. In November the council sent her a final reminder saying the debt would be passed to bailiffs. Mrs X wrote a further letter but again received no response.

In January 2008 the bailiffs visited and left a letter threatening to seize goods. In response to contact from Mrs X, the council said it had put the bailiff action on hold while it investigated the complaint. On 21 February it said it was still looking into the complaint and would contact Mrs X within seven days. It did not do so, and on 11 March the bailiffs visited Mrs X again.

Mrs X wrote to the council on 11 March and the council replied saying the bailiff action had been cancelled and the extra costs removed. The council reviewed the rate of repayment. Mrs X offered to increase the payments to £40 per month. The council informed Mrs X that it would accept £65 or it would make an attachment of earnings order of £109 per month.

The outcome

In response to the Ombudsman's enquiries about the complaint, the council:

- apologised for the bailiff action;
- applied a student discount for Mrs X's son backdated to September 2005;
- accepted repayment of the outstanding amount at a rate of £20 per month; and
- paid Mrs X £200 for the distress caused by the two unnecessary bailiff's visits, the payment was used to further reduce the debt.

(Case reference confidential)



J4: Recovery action

Vulnerable woman entirely dependent on social services – unreasonable pursuit for council tax arrears

The complaint

Mrs C entered the UK as a student. She failed to submit student exemption certificates to the council tax department, so she built up council tax arrears. She then became seriously ill. She complained about the way the council pursued her for arrears that she had no means of paying.

The Ombudsman's investigation

When Mrs C became seriously ill, she was unable to study and her immigration status prevented her from working or claiming benefits. After some time in hospital being treated for cancer, she became reliant on the council's social services department, who provided accommodation, a subsistence allowance, and helped her to apply for permission to stay in the UK. Mrs C remained unwell and continued to be totally reliant on support from social services, having no income or belongings other than those they provided.

Her social worker gave the council tax department evidence of Mrs C's situation. But the department failed to consider the evidence or to pass her case to the council tax welfare team. Instead it instructed bailiffs to collect the council tax arrears, even though it had evidence that Mrs C was vulnerable, had no income, and was being supported by a different council department.

If the department had acted on the information provided then it is unlikely that bailiffs would have been involved and the associated distress would have been avoided. Mrs C said she was so scared by the bailiff's actions that she spent the day hiding in the park.

The Ombudsman's view

The Ombudsman found that the council was at fault for failing to consider the information provided by the social worker and for failing to pass Mrs C's case to the welfare team. He also criticised the council for the lack of effective liaison between different departments of the same council and for failing to have a written policy on dealing with vulnerable people.

He said:

“...it is disappointing that, whilst the council has provided excellent support via its social services department, it also allowed a vulnerable person to be pursued by bailiffs for a debt that she had no means to pay.”

Outcome

The Ombudsman recommended that the council should:

- write off Mrs C's council tax arrears;
- pay her £250;
- implement a written policy on dealing with vulnerable people, and a policy on how to deal with people who are reliant on support from social services; and
- establish a formal link between the council tax welfare team and social services.

(Report 08 009 315)

J5: Public finance

Charging for services – council wrongly charged for statutory service street naming and numbering – misleading information – refunded part of charge

The complaint

The complaint was made by a property developer about the council's system for charging for work related to street naming and numbering.

What happened

The developer first approached the council in June 2007 for services associated with street naming and numbering of a development that was close to completion. The developer submitted an application and fee for the work in November 2007, and a few days later submitted a complaint that questioned the council's decision to charge for work that it had a statutory duty to complete. The council sought legal advice and responded to the complaint in January 2008. The letter explained that some of the services provided were discretionary and it was these that were the subject of a charge.

The developer did not halt the discretionary work or pursue the matter with the council but instead made a complaint to the Ombudsman.

The investigation

The information obtained by the Ombudsman indicated that the council had provided misleading advice in its publicity and in information considered by its cabinet about the basis for the charge. The reports to the council's cabinet said:

“commercial and residential schemes would have to pay to receive a street name or property number.”

In response to the Ombudsman's enquiries, the council said that it had undertaken a review and changes had been made to make it clear that the charges were for ancillary services and not for the council's fulfillment of its statutory function. However, this did not address the question of the payment of £10,400 made by the developer prior to the review and clarification.

The Ombudsman recommended that the council repay half of this amount in recognition of its failure to provide accurate information. He did not recommend repayment of the full amount on the ground that the developer had been a commercial developer for some time and had dealt with a number of different councils and so could reasonably have been expected to have an understanding of the system and to have questioned it sooner.

The council agreed to make the payment of £5,200.

(Case reference confidential)

