

**Report for:** Cabinet 10<sup>th</sup> December 2019

**Title:** **Report by the Local Government and Social Care Ombudsman into complaint by Ms B against Haringey Council.**

**Report authorised by :** Bernie Ryan, Monitoring Officer and Assistant Director Corporate Governance

**Lead Officer:** Bernie Ryan, Monitoring Officer and Assistant Director Corporate Governance

**Ward(s) affected:** N/A

**Report for Key/  
Non Key Decision:** Non Key decision

## **1. Describe the issue under consideration**

- 1.1 Ms B complained about the Council to the Local Government and Social Care Ombudsman (“the Ombudsman”). Her complaint related to the Council making her bankrupt following her non-payment of approximately £57,000 in unpaid business rates.
- 1.2 On 17<sup>th</sup> September 2019, the Ombudsman published a report finding fault with the Council and making recommendations as to the steps to be taken by the Council as a result.
- 1.3 It is for Cabinet to consider the report and the steps taken so far, and decide what further steps should be taken.

## **2. Cabinet Member Introduction**

- 2.1 The Ombudsman has made a report finding fault with the Council in relation to a complaint made by Ms B and has asked the Council to take certain steps to remedy that fault.
- 2.2 This report summarises the Ombudsman’s report and the steps that have already been taken. It also proposes further steps to be taken by the Council in response to the report.
- 2.3 The service have apologised for the mistakes made and is determined to learn from them.

- 2.4 Cabinet must consider the Ombudsman's report (shown at Appendix 1) and the steps it is proposed to take in response. I further recommend that the findings, recommendations and compensation payments be approved.

### **3. Recommendations**

That Cabinet:

- 3.1 Accept the findings and recommendations of the Ombudsman in the report dated 17<sup>th</sup> September 2019, as shown at Appendix 1.
- 3.2 Authorise officers' reduction of Ms B's debt by £3,400 as compensation, as set out in paragraphs 4.2 and 4.8 below.
- 3.3 Authorise officers to compensate Ms B by applying to annul her bankruptcy and paying the court and trustee costs of doing so up to a value of £20,000, as set out in paragraph 4.6 below.
- 3.4 Adopt this report as the Council's formal response under s.31 Local Government Act 1974, to be communicated to the Ombudsman.
- 3.5 Adopt this report as the Cabinet's formal response as required by s.5A Local Government and Housing Act 1989, to be distributed to all members and the Monitoring Officer.

### **4. Reasons for Decision**

#### Overview

- 4.1 As set out in the Ombudsman's report, Ms B has been found to have suffered injustices as a result of faults on behalf of the Council. In summary:
- The Council's procedure was to consider bankruptcy only if there were sufficient assets to pay the debt and costs incurred.
  - Ms B's property was mistakenly assessed as having sufficient equity to allow the Council's debts and costs to be recovered. However, there was in fact insufficient equity.
  - Therefore, bankruptcy was pursued contrary to the Council's procedure.
  - As part of good practice, the Council contacted the local authority where Ms B lives to ascertain any vulnerabilities Ms B might have. However, Ms B worked for her local authority and her colleagues were informed of her debt to the Council, causing her considerable professional embarrassment. The Council should have identified that Ms B worked for her local authority because this had been evident from her email signature.

- Ms B made a subject access request to the Council. The Information Commissioner has found that the Council did not respond promptly or provide all of the relevant information held.

4.2 The Ombudsman's findings are accepted. The service has apologised for the mistakes made and is determined to learn from them. Apologies have been given to Ms B, as set out at paragraph 36 of the Ombudsman's report. The Ombudsman has also recommended further ways the Council should try to remedy the mistakes for Ms B, and it is proposed that these are followed.

### Recommendations

4.3 The Ombudsman has recommended that action be taken to remedy the injustice to Ms B. The recommendations are to:

- apply to annul the bankruptcy and pay the court and trustee costs to do this;
- make a financial payment of £3,000 to Ms B to reflect the distress she suffered because of the Council's decision to start bankruptcy proceedings;
- make a financial payment of £400 to Ms B to reflect the distress she suffered because of the Council's breaches of the Data Protection Act; and
- write and send a letter to Ms B saying if it intends to recover the debt, the amount it is seeking to recover and how it is going to do this.

4.4 The Ombudsman has stated that the Council may offset the payments against the debt Ms B owes the Council.

### Reasons

4.5 The Ombudsman's recommendations are considered to be appropriate for the following reasons.

4.6 The initial view of officers liaising with the Ombudsman was that the Council should not apply to annul Ms B's bankruptcy because Ms B continues to owe the Council money and bankruptcy was legally permissible. However, it is now recommended that the Council do so in accordance with the Ombudsman's recommendations. This is because the Council's pursuit of bankruptcy was contrary to its procedure at that time which was only to consider bankruptcy if there were sufficient assets to pay the debt and costs incurred (ie the full debt and costs incurred). Therefore, bankruptcy would not have been pursued if the equity in Ms B's property had been correctly calculated. The procedure has since been updated to provide that bankruptcy may be appropriate even if the Council cannot recover the entirety of its debt and costs.

4.7 Ms B should not be expected to pay costs that have arisen because of fault on the part of the Council and so the costs of applying to annul the bankruptcy should be paid by the Council. The Council has been informed that the trustee's costs will be under £15,000. The cost of applying to the court is estimated to be no more than £5,000.

- 4.8 The trustee in bankruptcy has informed the Council that it would not oppose an application to annul Ms B's bankruptcy. However, the final decision as to whether to annul Ms B's bankruptcy would be made by the court and is at the court's discretion.
- 4.9 It is appropriate to pay compensation to Ms B given the Ombudsman's findings of injustice. However, given that Ms B continues to owe a significant sum to the Council, it is also appropriate for such compensation to be offset against that debt. Ms B would otherwise receive £3,400 from the Council despite owing the Council more than £50,000. Therefore, in accordance with the Ombudsman's recommendations, it is proposed to compensate Ms B by reducing her debt by £3,400.
- 4.10 The Information Commissioner has found that the Council should have identified that Ms B was likely to still be an employee of her local authority and there was potential for disclosure of her personal data to colleagues who would not necessarily need to know about the Council's investigation. As set out in the Ombudsman's report, Ms B had written to the Council between December 2014 and July 2015 using her local authority work email account with a signature that set out her job title.
- 4.11 The Information Commissioner found that the Council responded to a subject access request from Ms B late and did not conduct an adequate search to ensure all information was provided to Ms B. Ms B had made a subject access request in mid-March 2018 and this was responded to by the Council on 4 June 2018. A subject access request should normally be complied with within 1 month, unless the request is particularly complex.

#### Action already taken

- 4.12 Two public notice advertisements were placed in newspapers: (i) the Enfield and Haringey Independent and (ii) the Ham and High, stating that copies of the Ombudsman's report were available to inspect by the public at the Council's offices for a period of three weeks.
- 4.13 Officers have written to Ms B confirming that the outstanding debt has been reduced by £3,400 in accordance with the Ombudsman's recommendations.

#### Action it is proposed to take

- 4.14 It is proposed that the Council apply to annul the bankruptcy and pay the court and trustee costs of doing so.
- 4.15 Ms B would be informed of the effect on the recovery of the debt.

#### Views of senior officers

- 4.16 The Monitoring Officer has consulted with the Chief Executive and Chief Finance Officer, and they agree with the recommendations within this report.

## 5. Alternative Options Considered

- 5.1 The Ombudsman cannot force local authorities to follow its recommendations, but local authorities generally do follow them.
- 5.2 If the Ombudsman is not satisfied with the Council's response, he will make a further report explaining this and making recommendations. He can also require the Council to make a public statement about the matter.
- 5.3 Therefore, Cabinet could choose to reject any of the recommendations made by the Ombudsman.
- 5.4 However, this alternative is not recommended because the Ombudsman's recommendations represent an appropriate remedy for the reasons set out above.

## 6. Background Information

- 6.1 The full background is set out in the Ombudsman's report, as shown at Appendix 1.
- 6.2 Ms B accrued debts to the Council for unpaid business rates. In 2009 the Council obtained a liability order for unpaid business rates totalling over £20,000.
- 6.3 Ms B informed the Council that her business had failed and she had lost her home. The debt was pursued and passed to enforcement agents but the debts were not recovered.
- 6.4 In late 2017, the Council completed the checklist for bankruptcy proceedings. The Council's procedural document stated that: *"Any cases should be considered for bankruptcy only if: They have sufficient realisable assets e.g. equity in a property to pay the debt and all costs incurred"*. Therefore, the process involved an assessment of Ms B's assets.
- 6.5 Ms B owned a property on shared ownership terms. The Council obtained the amount of Ms B's mortgage debt and assessed the value of her property using the values of another property sold in her neighbourhood.
- 6.6 However, the property used for comparison was a 5-bed detached house and Ms B's property was a 2-bed terraced house. This was not identified and so the value of Ms B's property was significantly overestimated. This meant that Ms B's property was thought to have equity of £230,000 whereas in reality the equity was just over £17,000.
- 6.7 As good practice, local authorities should assess whether an individual has any underlying health issues or vulnerabilities before pursuing bankruptcy. Therefore, officers contacted Ms B's local authority to find out whether she was known to their social services.

- 6.8 Ms B worked for her local authority. Although this had been evident from emails Ms B had sent to officers of the Council in the past, it was not identified at the relevant time. Therefore, when the Council contacted her local authority, information about Ms B's debt to the Council was shared with Ms B's colleagues. Ms B has stated that this caused her considerable professional embarrassment.
- 6.9 Bankruptcy was considered appropriate in light of the information obtained. Therefore, in January 2018, the Council served a statutory demand on Ms B for the outstanding sum of just over £57,000. Ms B challenged this in court but was not successful. As the debt was not paid, the Council issued a bankruptcy petition. Ms B attended the court hearing and objected but the court nevertheless made a bankruptcy order.
- 6.10 Ms B complained to the Ombudsman. The Ombudsman found fault on the part of the Council causing injustice to Ms B. The faults were identified as being the decision to take bankruptcy proceedings based on an incorrect assessment of the value of Ms B's property and the way the Council contacted Ms B's employer and handled her subject access request. The injustice was considered to be the significant impact of bankruptcy proceedings, resulting in Ms B's bank account being suspended and her being at risk of losing her home. Ms B was also caused distress as a result of the way her employer was contacted and the way her subject access request was handled.
- 6.11 The Council was also considered to be at fault for failing to contact Ms B about the debt between July 2015 and December 2017. However, the Ombudsman identified that the Council was always likely to resume recovery action because of the significant size of the debt, and so this was not found to have caused Ms B significant injustice.

## **7. Contribution to Strategic Outcomes**

- 7.1 There is a legal obligation to consider such reports from the Ombudsman. Therefore, this report is necessary.
- 7.2 It is also part of the good administration of the Council to learn from any mistakes.

## **8. Statutory Officers Comments**

### Finance Comments

- 8.1 The Chief Finance Officer notes the contents of this report and supports the proposed recommendations. Taking action and amending processes in response to this type of investigation will help minimise the likelihood of similar complaints in the future.
- 8.2 The costs of applying to annul Ms B's bankruptcy and paying the court and trustee costs is estimated to be up to a value of £20,000. This cost will be

charged to the Council's corporate budget and funded from in-year savings within the corporate centre.

### Legal Comments

- 8.3 The Council is required to give public notice by advertisements in newspapers stating that copies of the Ombudsman's report will be available to inspect by the public at the Council's offices for a period of three weeks (s.30 Local Government Act 1974).
- 8.4 Where a report such as this is made by the Ombudsman, it must be laid before the authority (s.31 Local Government Act 1974). In cases such as this where the Council is operating executive arrangements, "the authority" means the executive, i.e. Cabinet (s.25(4ZA) Local Government Act 1974).
- 8.5 The monitoring officer is obliged to consult with the head of paid service and chief finance officer, and prepare a report to Cabinet. This report must be sent to each member of the authority and Cabinet must meet within 21 days thereafter. Implementation of the proposal or decision must be suspended until after the report has been considered by Cabinet (s.5A Local Government and Housing Act 1989).
- 8.6 Where Cabinet considers an Ombudsman's report and it is considered that a payment should be made or other benefit given to a person who has suffered injustice, such expenditure may be incurred as appears appropriate (s.31(3) Local Government Act 1974).
- 8.7 The Ombudsman must be informed of the action taken by the Council and any action it is proposed to take within 3 months of the date on which the Council received the report, or such longer period as may be agreed by the Ombudsman in writing (s.31(2) Local Government Act 1974).
- 8.8 If the Ombudsman does not receive notification of such action or is not satisfied with it, he will make a further report explaining this and making recommendations. He can also require the Council to make a public statement in any two editions of a newspaper circulating the area within a fortnight (s.31(2A) and (2D) Local Government Act 1974).
- 8.9 An Ombudsman's report should not normally name or identify any person (s.30 Local Government Act 1974). Therefore, the complainant is referred to as 'Ms B' and officers have not been identified.

### Procurement Comments

- 8.10 There are no specific procurement implications that arise from this report.

### Equality Comments

- 8.11 The Council has a Public Sector Equality Duty under the Equality Act 2010 to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;

- Advance equality of opportunity between people who share those protected characteristics and people who do not; and
- Foster good relations between people who share those characteristics and people who do not.

The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

- 8.12 The report outlines the plan to adopt the Ombudman's recommendations for Ms B, taking into consideration distress suffered through the breach of the Data Protection Act and decision to start bankruptcy.
- 8.13 The Ombudsman's report did not find the Council to be in breach of the Equality Act 2010. The Equality Act 2010 legally protects people from discrimination on the basis of protected characteristics (including age and sex) from discrimination in the workplace and wider society.
- 8.14 In response to the Ombudsman report and recommendations, the Council has committed to learn from and improve the practice for debt recovery, in line with the principles of the Equality Act 2010.

## **9. Use of Appendices**

- 9.1 Appendix 1: Report by the Local Government and Social Care Ombudsman, Investigation into a complaint against London Borough of Haringey (reference number: 18 004 520).

## **10. Local Government (Access to Information) Act 1985**

- 10.1 N/A