

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
London Borough of Haringey
(reference number: 18 004 520)**

17 September 2019

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Ms B The complainant

Report summary

Benefits and Taxation

Ms B complains about the Council's handling of a business rates debt and its decision to start bankruptcy proceedings against her

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused by the fault identified in this report, we recommend the Council should:

- 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.

The Council may offset the payments against the debt Ms B owes the Council.

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The complaint

1. Ms B complains about the Council's handling of a business rates debt and its decision to start bankruptcy proceedings against her. Specifically, Ms B complains the Council:
 - wrongly decided she was liable for the business rates debt and did not serve the liability orders properly;
 - did not contact her about the debt between mid-2015, when it said it would be reviewing the case due to her extenuating circumstances, and December 2017, when the Council threatened her with bankruptcy and said she must pay £50,000 immediately;
 - wrongly contacted her employer about the debt;
 - delayed responding to her subject access request and did not provide all the information she requested; and,
 - did not consider alternatives to bankruptcy proceedings.
2. Ms B says fault by the Council caused a deterioration to her mental health and she cannot pay the money demanded by the Council. Ms B says the Council's contact with her employer has caused her substantial damage, distress and embarrassment.

What I have investigated

3. We have investigated all Ms B's complaint with the exception of Ms B's complaint that she was not liable for the business rates debt.
4. We have not investigated this part of the complaint because the courts have decided that Ms B is liable for the debt. We cannot investigate matters which have already been decided by the courts.

Legal and administrative background

The Ombudsman's role

5. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
6. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
7. We normally expect someone to refer the matter to the Information Commissioner if they have a complaint about data protection. However, we may decide to investigate if we think there are good reasons. (*Local Government Act 1974, section 24A(6), as amended*)
8. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)
9. We cannot investigate a complaint about the start of court action or what happened in court. (*Local Government Act 1974, Schedule 5/5A, paragraph 1/3, as amended*)

The Council's procedure for bankruptcy

10. The Council has a Council tax and Business Rates Procedure for Bankruptcy.
11. The Procedure says:

“The Council can decide to take bankruptcy action if a taxpayer/business rate payer has liability orders for a debt of more than £5,000.00. Bankruptcy should only be considered if all other methods of recovery have failed or are considered inappropriate. It is considered to be a last resort in most cases. 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.
 - Are not considered to be vulnerable
 - All other practicable enforcement remedies have been exhausted.

IMPORTANT NOTE: The effects of bankruptcy may result in the taxpayer losing his/her home and the process can be costly to administer. All officers considering insolvency must complete the checklist and must prepare the statement of account for each case. The authorisation to undertake insolvency action will be undertaken by a senior officer.

In considering the most appropriate form of recovery including insolvency it is important to build up as much information as possible about the taxpayer.”
12. The Procedure sets out the process the Council must follow when starting bankruptcy proceedings. It includes the following stages:

“Carry out the necessary checks with Adult Services (Integrated Access Team) to check whether the taxpayer is known to them in respect of any issues of vulnerability (this will include mental health and elderly care).

If the ratepayer/taxpayer lives outside the borough contact the appropriate Council Social Services Team to check any possible vulnerabilities and whether the person is currently known to be receiving any care or support from the service.”
13. The Procedure includes a checklist which must be completed. The Procedure says:

“This must be completed for each case and must be signed by the officer completing the form before being passed to a senior officer for authorisation. In general the senior officers for the process will be the Court Officers, in their absence the Service Manager.”
14. The checklist form used by the Council says the following:

“For the use of bankruptcy as a successful recovery tool there has to be enough ‘equity’ in the property. It is important that points 14,15 and 16 [relating to the estimated value of the person’s property] are completed and estimates of property value conservative.”

How we considered this complaint

15. We produced this report after examining relevant documents and interviewing the complainant.

What we found

What happened

16. In 2009 the Council obtained a liability order against Ms B for unpaid business rates totalling over £20,000.
17. The Council says between 2009 and 2015 it used three different enforcement agents to try to recover the debt but was not successful.
18. Between December 2014 and July 2015 Ms B was in email contact with the Council's Service Manager about the debt. Ms B said her business had failed and she had lost her home, but she had managed to get a job with a local authority (not the Council). Ms B sent emails to the Council from her local authority work email account. Ms B's emails included her job title in her email 'signature'.
19. During this period the Service Manager told Ms B the Council had put enforcement action on hold. The last email Ms B received from the Service Manager was sent on 31 July 2015. It said:

"I am sorry that this matter has not been resolved. However, as [you] will appreciate the sum involved is substantial and a decision is still pending as to how to resolve the matter. I will contact you further in the near future but please rest assured the matter does remain on hold with our Enforcement Agents."
20. In December 2016 Ms B bought her current home from a housing association on shared ownership terms. Ms B says she borrowed £12,000 from a friend to pay the deposit. It is a two bedroom property. Ms B says the property was valued at £285,000 when she bought it and she bought a 50% share, which was the minimum share she could buy. Ms B got a mortgage to pay for the property.
21. Ms B did not hear anything further from the Council about the debt until December 2017 when she received a letter from the Council. The letter said the following.
 - The Council was writing about Ms B's unpaid business rates amounting to £55,625.33 of which £20,471.87 was subject to liability orders.
 - Unless she settled the debt within seven days, it was the Council's intention to issue a statutory demand in bankruptcy against her without further delay.
 - This means on service of the demand, if Ms B failed to pay the debt, she may be subject to bankruptcy proceedings.
 - Ms B could avoid this action by making immediate payment or making a suitable arrangement to settle the account within seven days.
22. The letter summarised what could happen if Ms B was declared bankrupt.
23. The Council's records show that when it wrote to Ms B, it completed the checklist for bankruptcy proceedings. The following sections of the checklist set out how the Council assessed Ms B's equity in her property.
 - Section 14 is about the total debts against the property. The Council recorded this as £124,232.
 - Section 15 says "Use Google maps and search the address – use street view to check the condition of the property to help in guiding your valuation. Note type of property and condition of windows etc." This section of the form is left blank and was not completed for Ms B's case.

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- Section 16 says “Use rightmove.com or nethouseprices.com to establish if property is up for sale or what the property (or neighbouring/similar) last sold for and when”. In this section, the Council recorded ‘Sold date: Aug 17 Price: £585,000’. This was the sold price for a neighbouring property.
 - Section 17 is used to estimate the person’s equity based on the figures for section 14 and 16. It says “Equity Estimate value (section 16) less secured debts (14)”. It also says “Joint owners? Divide equally e.g. 2 owners 50% each.” In this section the Council calculated Ms B’s equity as follows: The property value of £585,000 minus Ms B’s debt against the property of £124,232 equals £460,768. The Council then divided this figure in half because it was aware it was a shared ownership property. This meant the Council assessed Ms B’s equity in the property to be £230,384.
24. In December, the Council sent an email to the local authority where Ms B lives (and which is also her employer) asking for personal information about her and about the debt. This email was sent to the local authority’s social services team email address. Ms B became aware of the email because she works for the local authority and the email was forwarded to her team to deal with. Ms B said the email caused her considerable professional embarrassment.
 25. Ms B says she asked the Council what it considered to be a reasonable time period for her to repay the debt and the Council replied by saying two months. Ms B says she could not believe the Council expected her to pay around £50,000 in two months.
 26. The Council, via its legal representatives, wrote to Ms B again in early 2018. The Council said the letter was a formal demand for payment of £55,625.33. The Council said if it did not receive payment in full of this sum within seven days it would start bankruptcy proceedings against Ms B.
 27. In mid-January the Council served Ms B in person with a statutory demand. The debt stated on the statutory demand was £57,368.58. This amount included summonsed debts totalling £35,153.46. Ms B later put in an application to the court for the statutory demand to be set aside.
 28. In mid-March Ms B put in a subject access request to the Council.
 29. The Council then served a bankruptcy petition on Ms B. The petition was for a total debt of £57,368.58.
 30. The court heard Ms B’s application for the statutory demand to be set aside. The court dismissed Ms B’s application. A bankruptcy petition hearing was then scheduled for summer 2018.
 31. In June Ms B complained to us.
 32. The Council responded to Ms B’s subject access request on 4 June. Ms B complained to the Information Commissioner that the Council had not provided all the information she requested. Ms B also complained to the Information Commissioner about the Council sending an email about the debt to her employer.
 33. The bankruptcy order hearing took place as scheduled. Ms B attended the hearing and made representations. The court granted the bankruptcy order.
 34. During this period, the Information Commissioner decided Ms B’s data protection complaint. The Information Commissioner decided that:

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- the Council was entitled to contact the local authority where Ms B lives to ask for information about her. But, the Council should have identified it was likely that Ms B remained an employee of the local authority and there was the potential for disclosure of her personal data to colleagues who would not necessarily need to know about the Council's investigation; and
 - it was unlikely the Council had complied with the Data Protection Act because it responded to Ms B's request late and did not conduct an adequate search to ensure all information was provided to Ms B.
35. The Information Commissioner recommended the Council take action in response to its findings.
36. In response to our enquires the Council said the following.
- It identified this case in late 2017 and considered how best to recover the debt. The service manager who was in email contact with Ms B until July 2015 has since left the Council. At the time the emails were sent from the service manager's personal email account and were not put onto the Council's system. The Council expressed its sincere apology to Ms B for not having details on its system at the relevant time of the correspondence between her and the service manager. The Council said it would have still referred the debt to its agents to recover.
 - It contacted the local authority where Ms B lives to request basic information about whether Ms B was known to social services. This was in line with the Council's procedure. The Council did not know Ms B worked for the local authority. The Council apologised for the distress and any harm to her professional dignity caused by the situation.
 - When cases are referred for insolvency action the Council checks what information is generally available about the estimated price of the property where relevant information is known. This is not a precise calculation because this would involve a surveyor to inspect the property, which is not generally viable.
 - The Council aims to find a neighbouring property of similar size and character as far as that is possible to estimate the price. This was done in Ms B's case.
 - The price paid by Ms B according to the Land Registry was £142,000.
 - The Council discovered that a neighbouring property was sold for £585,000 in 2017 (this property is the next number up from Ms B's property - we have called it Property A and Ms B's property, Property B).
 - Similar properties on the road were sold in 2017 for £565,000 and £570,000, so this was a reasonable estimate. The Council had no other means available to estimate the value of the property.
 - The Council obtained details from the housing association website which said that the usual share customers buy is a minimum of 50% in the property and often more. So, it was calculated that around £230,000 was the minimum available equity share available to Ms B.
37. We have shared the Council's comments on how it valued the property with Ms B. In response, Ms B said:
- Property A is a five bedroom detached house with off street parking and a double garage.

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- Property B is a two bedroom terraced house built for social housing.
38. Ms B provided us photographs of both properties. We have shared this information with the Council. The Council responded by saying the Official Receiver will assess the value of the property and advise the Council of the way forward.
39. Ms B says the bankruptcy order has significantly affected her and her family. Ms B says:
- in January 2019 her bank account was suspended;
 - her physical and mental health has got worse;
 - her mortgage payments have increased;
 - she does not have any credit cards so has struggled to make essential purchases for her children;
 - relationships within the family have become strained; and,
 - she has been inundated with letters and calls from companies contacting her about the bankruptcy.
40. In February the Council sent Ms B a letter saying she had fallen behind with her business rates and must pay £35,153.46 within seven days. The Council later confirmed it sent this letter in error.

Analysis

41. We will first address Ms B's complaint about the Council's decision to start bankruptcy proceedings, before addressing Ms B's additional complaints under separate headings.
42. The Council has explained that it had not been successful trying to recover the debt using enforcement agents and it was not appropriate to start committal proceedings. Although Ms B is no longer self-employed, an attachment of earnings order cannot be used to recover business rates debts. So, the Council was not at fault for considering whether to start bankruptcy proceedings.
43. Ms B complains the Council added debts which were not subject to a liability order to the bankruptcy petition. But, the law allows local authorities to do this. The Council and its agent were consistent about the debt which was subject to bankruptcy proceedings.
44. However, our view is the Council's decision to start bankruptcy proceedings was taken with fault.
45. The Council's bankruptcy procedure makes it clear that bankruptcy proceedings are a last resort and should only be started where the person has sufficient realisable assets such as equity in a property to pay the debt and all costs incurred. The Council's bankruptcy checklist also says that estimates of property value should be conservative.
46. The Council's assessment of Ms B's equity in her property is set out in the checklist which the Council completed. We are satisfied this assessment was taken with fault.
47. To assess the value of Ms B's home the Council used the sale price for Property A which sold for £585,000 in 2017. Based on this valuation figure, the Council considered Ms B's property to be of a similar value. So, the Council decided Ms B had sufficient equity in the property to pay the debt and all costs.

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48. It is clear from the information provided by Ms B, including photographs, that her property and Property A are significantly different.
 49. The Council says other properties on the road sold for a similar price, so it was reasonable to estimate Ms B's property to be of a similar value. But, information online shows that some properties on the road have sold for much less - around £350,000.
 50. Also, the relevant section of the checklist about using Google maps and Streetview to view the property online has not been completed.
 51. This is important because the notes say: "use street view to check the condition of the property to help in guiding your valuation. Note type of property and condition of windows etc." This shows the Council is aware that using sold prices alone is not enough to make a sound estimate of a property's value.
 52. It is possible the Council did not complete this section because the road is not available to view on Google Streetview. The Council should have undertaken further enquiries to be satisfied it had correctly assessed the value of Ms B's home. The Council could have asked Ms B to confirm the size of the property and if needed, visited the area to view the property. The Council could also have asked Ms B to confirm the purchase price and mortgage amount. The implications of bankruptcy are serious, so the Council should have made sure it got this decision right. All the information shows the Council was not aware of the size or type of Ms B's property when it estimated the property's value.
 53. Even without any information about the size of Ms B's property, the Council says it got information from the Land Registry which showed Ms B paid £142,000 for the property. So, the Council should have been aware the value of Ms B's property was significantly less than £585,000, and her equity was far less than the Council had estimated.
 54. We are satisfied the Council's valuation of Ms B's property was affected by fault.
 55. We also consider it more likely than not the Council would not have started bankruptcy proceedings if it undertook this assessment correctly. This is because, as we have already showed, the information does not suggest Ms B had enough equity in her property to pay the total debt and all costs.
 56. Ms B paid £142,000 for her 50% share in the property. As identified by the Council when it completed the checklist, her total debt against the property was £124,232.
 57. This means Ms B's equity in the property at the time the Council made its decision was £17,768. This was not enough to pay the total debt of £57,368.58 owed to the Council and the Council's costs. The Council's bankruptcy procedure says the Council will not start bankruptcy proceedings in such circumstances.
 58. We find the Council's decision to start bankruptcy proceedings was affected by fault.
 59. Ms B has suffered a significant injustice because of the fault we have identified. As the Council recognises, the impact of being made bankrupt is significant. Ms B is at risk of losing her home. Ms B has also suffered considerable distress because of the Council's decision and has had her bank account suspended.
 60. We have asked the Council to take action to put right the injustice suffered by Ms B. The Council has agreed to make a payment to Ms B but has not agreed to our recommendation to apply to annul the bankruptcy.

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61. The Council says Ms B said at the bankruptcy hearing she could not pay the debt. The Council also says it is satisfied with its decision to make Ms B bankrupt.
62. But, the Council's decision was not in line with the Council's own bankruptcy procedure. The Council's decision to start bankruptcy proceedings was flawed. If the Council had followed its procedure Ms B would not have been made bankrupt. So, the Council should put this right by applying to annul the bankruptcy.
63. The Council says as part of the business rates reduction programme it reviewed its criteria for bankruptcy to include insolvency as a factor. But, the Council says it did not update the checklist to include this. If the Council did such a review it should have implemented it properly to ensure all procedures were updated.
64. The Council says it is not acceptable for it to pay the costs of annulling the bankruptcy. But, Ms B should not be expected to pay costs that have arisen because of fault by the Council.
65. The Council says if it annulled the bankruptcy Ms B would be in a worse financial position. Ms B does not accept this and we are not persuaded by the Council's argument.
66. We will now address each of Ms B's further complaints.

The lack of contact between July 2015 and December 2017

67. Our view is the Council was at fault for not contacting Ms B about the debt between July 2015 and December 2017. It appears this was the result of the service manager who was handling the case leaving the Council's employment. It is likely arrangements were not put in place to transfer the case to another officer, and this meant the Council did not take any further action until December 2017.
68. It appears the service manager's use of a personal email account without uploading the correspondence to the Council's system made the matter worse.
69. If the service manager had sent any further emails to Ms B after July 2015 we would expect Ms B to have received these.
70. However, Ms B would have been aware during this period that she owed the Council a large debt dating back several years. It would have been open to Ms B to have chased the Council to find out what was happening with the debt. In addition, while the letter sent in December 2017 caused Ms B distress, it would have been reasonable for her to expect the Council to pursue the debt again.
71. Because of the significant amount of time that had passed since the Council had last been in contact, we find the Council should have given Ms B more time to respond before starting bankruptcy proceedings. The Council's letter only gave Ms B seven days to pay the debt in full. This was unreasonable given the Council had not been in contact for around two and a half years.
72. However, because of the significant size of the debt, the Council was always likely to resume recovery action if it had allowed Ms B more time to pay the debt. This means we cannot say the fault by the Council caused Ms B a significant injustice.

The Council's contact with Ms B's employer and its handling of Ms B's subject access request

73. Ms B complained to the Information Commissioner about both these matters. The Information Commissioner decided the Council had breached the Data Protection Act, both by its handling of Ms B's subject access request and the way it contacted her employer.

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74. But, the Information Commissioner decided the Council was entitled in principle to contact Ms B's employer about the debt.
75. The Information Commissioner cannot award compensation, but Ms B has the right to take the Council to court to seek compensation for the distress caused by the way it has used her personal data. We have placed weight on Ms B's comments that she does not have the time, energy or money to pursue this at court. Given Ms B has been made bankrupt we do not consider it is reasonable for Ms B to take the Council to court to pursue a compensation claim.
76. So, we have asked the Council to make a payment to reflect the avoidable distress Ms B suffered because of colleagues in her department being aware of the debt. But, we find it likely that some of Ms B's colleagues in the social services department would have become aware of the debt, even if the Council had taken the steps recommended by the Information Commissioner.
77. We have also asked the Council to make a payment to reflect the distress Ms B suffered because of the Council's failure to promptly respond to her subject access request or provide all the information it held. This meant Ms B did not have all the information she was entitled to during a very stressful period.

Conclusions

78. The Council's decision to start bankruptcy proceedings against Ms B was affected by fault. We find the Council would not have started bankruptcy proceedings if it had given proper consideration to the value and amount of equity in Ms B's property. This decision to start bankruptcy proceedings caused Ms B considerable distress and has had significant implications for her.
79. In addition, the Council was at fault for the way it contacted Ms B's employer about the debt and its handling of Ms B's subject access request. This also caused Ms B avoidable distress.

Recommendations

80. To remedy the injustice caused by the fault identified in this report, we recommend the Council should:
- apply to annul the bankruptcy and pay the court and trustees 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.
81. The Council may offset the payments against the debt Ms B owes the Council.
82. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

83. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Ms B. The Council should take the action we have recommended to remedy that injustice.