

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

**Investigation into a complaint against
London Borough of Islington
(reference number: 18 014 066)**

04 October 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

Mrs X The complainant

Report summary

Benefits and tax – Business Rates

Mrs X complains the Council unreasonably delayed in sending her a demand for business rates for 1 April 2000 to 31 March 2001 which she considers she is not liable for. As a result, Mrs X cannot challenge the Council's decision she is liable for the business rates as she no longer has the evidence to do so.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, we recommend the Council:

- makes a payment of £100 to acknowledge the avoidable time and trouble and frustration caused to Mrs X;
- reimburses £1038.20 paid by Mrs X and in doing so writes off the debt; and
- reviews its Council Tax and Business Rates Collection Policy to ensure the Council considers if it is fair to pursue a historical debt when the passage of time may prevent a person from being able to challenge the debt. The Council should explain to us the action it has taken to improve its practice in this area.

The Council has accepted our recommendation to make a payment of £100 and reimburse £1038.20 paid by Mrs X and write off her debt.

The complaint

1. Mrs X complains that the Council unreasonably delayed in sending her a demand for business rates for 1 April 2000 to 31 March 2001 which she considers she is not liable for. As a result, Mrs X cannot challenge the Council's decision she is liable for the business rates as she no longer has the evidence to do so.

Legal and Administrative background

2. 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*)
3. 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*).
4. Mrs X had the right to apply to the court to have the liability order set aside. However, we have exercised our discretion to investigate Mrs X's complaint as it is not reasonable to expect her to apply to the court due to the potential costs in doing so. Furthermore, the delay by the Council in taking action to trace Mrs X means she has no realistic chance of being able to provide evidence to the court to challenge her liability for the debt.

How we considered this complaint

5. We produced this report after considering the information from Mrs X. We have also considered the Council's response to our enquiries and its policies.
6. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

The Council's recovery policy

7. The Council's Council Tax and Business Rates Collection Policy provides it will collect all outstanding debts irrespective of age where they can be legally and practically recovered. A liability order must have been issued within six years of the bill being issued. The Council's policy states that there is usually a detailed record of the debt owed so it considers the customer would have had opportunities to challenge the liability at the time and would have been aware the debt remained unpaid.

What happened

8. In the 1990s Mrs X leased premises for her business. The Council charged business rates at the property.
9. In 2001 the Council issued a bill for business rates for April 1996 to 2001 to Mrs X. Mrs X did not pay the bill. The Council's records show it issued a

summons and obtained a liability order in November 2001. It then passed the debt to bailiffs to collect but they returned the debt as they were unable to trace Mrs X.

10. The Council attempted to collect the debt again in January 2017. It eventually traced Mrs X in May 2017 and sent a demand for 1 April 2000 to 31 March 2001 for the sum of £1038.20. This is 20% of the debt. The Council decided to write off the debt for April 1996 to March 2000 as it considered it was unlikely it could collect the full amount.
11. Mrs X contacted the Council as she disputed her liability for the debt. She then instructed solicitors to deal with the matter. The solicitors advised the Council that Mrs X did not occupy the premises for the period in question and the Council could not pursue the debt as it arose more than six years ago. The Council advised it had obtained a liability order which meant there was no time limit in which to pursue the debt.
12. Mrs X paid the debt in November 2017. In May 2018 Mrs X made a complaint about the Council's decision to pursue the debt. She also requested the Council reimburse her solicitor's fees.
13. The Council responded to Mrs X's complaint at stage one of its two stage complaints procedure in July 2018. In its response the Council said Mrs X had not provided evidence she had vacated the premises before 2001. It asked Mrs X to provide evidence she had terminated the lease at the premises. Mrs X provided additional information including a letter dated June 1998 advising the Council she moved from the premises in May 1997. The Council considered this was not sufficient to show the termination of the lease.
14. In August 2018 Mrs X made a further complaint and said she could not provide the information required to prove she had terminated the lease as she no longer had the records. The Council contacted the landlord who denied they had terminated the lease.
15. The Council considered Mrs X's complaint at stage two of its complaints procedure and responded in late October 2018. The Council said the landlords no longer held records for 2001 and did not accept liability for the business rates. The Council also said it could amend the liability if Mrs X could provide proof she surrendered the lease.
16. In response to our investigation the Council has said:
 - the onus is on the charge payer to ensure all outstanding bills are paid for the property that was leased at the time in question prior to and at the time of departing;
 - Mrs X did not notify the Council she had left the property or provide a forwarding address which caused the delay in tracing her;
 - a charge payer is not entitled to take the position that their responsibilities no longer exist because they caused the delay in finding them by leaving the property without providing a forwarding address;
 - it is in the public interest for the Council to protect, collect and maximise business rates collection;
 - digital developments, including social media, have made it easier to trace debtors; and

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- Mrs X could have made an application to the court to have the liability order set aside.

Analysis

17. The Council is at fault as it delayed in taking action to trace Mrs X. The Council has said Mrs X caused the delay in tracing her as she did not provide a forwarding address. We acknowledge digital developments in recent years, including social media, will make it easier to trace debtors. But the Council did not take any action to trace Mrs X between 2001 when the bailiffs returned her account and 2017. The Council traced Mrs X within five months when it started tracing her in 2017. There were methods available to trace debtors in the early 2000s. So, on balance, we consider the Council would have quickly traced Mrs X had it taken action to do so when the bailiffs returned the account in 2001. The Council's delay of 16 years in taking action to trace Mrs X is excessive and poor administrative practice. This is particularly so as the Council aims to maximise the collection of business rates.
18. The Council has demonstrated it obtained a liability order in 2001 so it could collect the historical debt. But it did not consider if it was reasonable and fair to collect the debt. This is fault. The passage of time will inevitably make it difficult for a person to challenge the Council's decision that they owe a debt as evidence to support their challenge may no longer be available.
19. The Council's position is Mrs X could have applied to the court to have the liability order set aside. It also considers councils would be embarking on a parallel exercise to that of the courts if they considered whether it was fair and reasonable to enforce the liability order and collect the debt. We do not accept the Council's argument. Councils have discretion as to whether they should enforce a liability order. They risk fettering that discretion if they will never consider whether it is appropriate, fair and reasonable to enforce a liability order. Nor do we accept it would place an unreasonable burden on councils to consider if it is fair and reasonable to enforce a liability order for a historic debt.
20. Mrs X says she is not liable for the debt as she did not lease the premises at the time the debt arose. The Council's delay of 16 years in taking action to trace Mrs X placed her at a significant disadvantage as she no longer has records to defend her position that she had moved from the premises in 1997. The Council and Mrs X cannot obtain corroborating evidence as the landlord no longer has records to show who is liable due to the passage of time. So, the excessive delay by the Council in taking action to trace Mrs X means she does not have, and cannot obtain, evidence to show whether or not she is liable for the debt. It cannot be fair for the Council to collect the debt when its own delay has prevented Mrs X from being able to challenge it.
21. The Council wrote off 80% of the outstanding debt. An internal Council email dated 17 August 2018 states the Council wrote off 80% of the debt as it was unlikely to be able to collect this amount. In response to our enquiries the Council has variously said it exercised its discretion to only collect 20% once it could trace Mrs X and that its system would not allow it to raise a debt before April 2000. This evidence shows the delay in taking action to trace the debt has hampered the Council's ability to collect the full debt.
22. The Council's complaints procedure provides it will respond to stage one complaints within 21 calendar days and stage two complaints within 28 working days. The Council is at fault as it delayed in responding to Mrs X's complaint at both stages. These delays will have caused frustration to Mrs X.

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23. The Council should remedy the injustice to Mrs X by writing off the debt and reimbursing £1038.20 paid by Mrs X. The Council should also make a payment of £100 to acknowledge the frustration and avoidable time and trouble caused to her. The Council has agreed to these remedies as it acknowledges there is some, although not conclusive, evidence Mrs X was not liable and it did not deal with the matter satisfactorily.
24. We recommended that the Council sends a written apology to Mrs X for the avoidable time, trouble and frustration caused by its unfair recovery of the debt. The Council has refused to apologise as it does not consider the recovery of the debt was unfair as Mrs X could have made an application to set aside the liability order. We remain of the view an apology is a reasonable and proportionate remedy. But we will not pursue this remedy in view of the Council's unwillingness to agree to this. We have concerns that such an apology would not be genuine nor freely given.
25. Mrs X wants the Council to reimburse her legal fees. We understand Mrs X was concerned by the Council's contact about the debt. But is not appropriate to recommend the Council reimburses Mrs X's legal fees as she could have pursued the matter with the Council and made a complaint without instructing a solicitor.

Conclusions

26. The Council is at fault as it delayed in taking action to trace Mrs X for outstanding business rates. As a result of the 16 year delay Mrs X no longer has evidence to challenge the Council's decision that she was liable for the business rates.

Recommendations

27. The Council must consider this 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*)
28. We welcome that the Council has now agreed to:
- Make a payment of £100 to Mrs X to acknowledge the avoidable time, trouble and frustration caused to her.
 - Reimburse £1038.20 paid by Mrs X and in doing so writes off the debt.
29. In addition to the requirements above the Council should:
- review its Council Tax and Business Rates Collection Policy to ensure the Council considers if it is fair to pursue a historical debt when the passage of time may prevent a person from being able to challenge the debt. The Council should explain to us the action it has taken to improve its practice in this area.

Decision

30. We have completed our investigation into this complaint. There was fault causing injustice to Mrs X. The Council should take the action identified in paragraphs 28 and 29 above to remedy that injustice.