

Report

on an investigation into
complaint no 08 009 315 against
Slough Borough Council

26 March 2009

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Key to names used

Mrs Carter	-	The complainant
Connie	-	The complainant's daughter
Officer A	-	Council Tax Officer

Report summary

Council Tax recovery action

Mrs Carter (not her real name for legal reasons) entered the UK as a student in 2002. She failed to submit student exemption certificates to the Council Tax department so she built up Council Tax arrears.

In 2006 Mrs Carter became seriously ill; she was unable to study and her immigration status prevented her from working or claiming benefits. After a period of 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 Carter remains unwell and continues to be totally reliant on support from Social Services; she has no income or belongings other than that provided by Social Services.

In April 2008 her Social Worker gave the Council Tax department evidence of Mrs Carter'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 she 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 Carter said she was so scared by the bailiff's actions that she spent the day hiding in the park.

Finding

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 Carter'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.

Recommended remedy

The Ombudsman recommended that the Council should write off the Council Tax arrears and pay compensation of £250.

He also recommended that the Council should 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. The Ombudsman also recommended that a formal link should be established between the Council Tax Welfare Team and Social Services.

Introduction

1. Mrs Carter complains that the Council took inappropriate enforcement action against her for Council Tax arrears. She was seriously ill, had no money or possessions, and was totally reliant on Social Services. But, despite being told about her circumstances, the Council instructed bailiffs to collect unpaid Council Tax, causing additional distress.
2. For legal reasons, the names in this report are not the real names of the people involved. Some details have been omitted or changed to protect the anonymity of Mrs Carter and her family¹.
3. One of my investigators has inspected Social Work files and Council Tax files. My investigator also interviewed Mrs Carter's Social Worker and a senior Council Tax officer. A draft of this report was sent to the Council and to Mrs Carter. The Council replied and I have taken its comments into account when preparing the final text and reaching my conclusions.

Legal and administrative background

My jurisdiction

4. My authority to investigate complaints stems from the 1974 Local Government Act.
5. The 1974 Act says that I shall not investigate

“the commencement or conduct of civil or criminal proceedings in any court of law”².

However, I am able to consider actions which occurred before the start of legal proceedings. I am also able to consider the actions of bailiffs when they have been instructed by the Council to collect Council Tax arrears.

6. The 1974 Act also says that I shall only investigate a complaint if the matter has already been brought to the attention of the Council and the Council has had an opportunity to consider the complaint and respond³.

1 Local Government Act Section 30(3)

2 Local Government Act 1974, Schedule 5

3 Local Government Act 1974 Section 26(5)a

Relevant council tax legislation

7. Students are disregarded for the purposes of Council Tax⁴. Students should submit proof of their student status to the Council Tax department. The exemption lasts until the course ends or until the student leaves. The regulations define who should be treated as a student.
8. If a person lives alone in a property then their Council Tax is reduced by 25%.
9. If Council Tax is unpaid then the Council can apply for a liability order from the Magistrates Court. Once a liability order has been obtained there are a number of ways in which the Council can try to secure payment of the arrears. Options for the recovery of a Council Tax debt include:

Bailiffs

10. Bailiffs can be instructed to collect Council Tax arrears. This is usually done by the bailiff threatening to take, or taking, certain goods belonging to the debtor. Goods can only be taken if the bailiff has gained peaceful entry into the home. Unless peaceful entry has been made on a previous visit then a bailiff is not allowed to break in to collect Council Tax debts. The police would only usually be involved if a disturbance arose during the course of a visit.

Attachment of earnings

11. If a debtor is in work then the Council can apply to the employer for deductions to be made from their wages.

Attachment of benefit

12. If a debtor receives certain benefits then the Council can ask for direct deductions to be made from their benefits and paid directly to the Council.

Committal hearing

13. If a Council has unsuccessfully tried to recover the debt through the use of bailiffs then it can ask the debtor to appear before the Magistrates Court. The Court will consider if the debtor should be committed to prison for 'wilful refusal' or 'culpable neglect' in the non-payment of their Council Tax. The magistrates will conduct a means enquiry to establish why the Council Tax has not been paid. The magistrates can then commit the debtor to prison, suspend the committal on terms (order a fresh payment arrangement) or remit the debt (write it off).

4 The Council Tax (Discounts Disregards) Order 1992 SI 548

Bankruptcy and charging orders

14. A Council can apply to make a debtor bankrupt or apply for a charging order against the sale of a debtor's house. This is only a viable option if the debtor has assets or property.

Investigation

Background

15. Mrs Carter, and her two dependent children, arrived in the UK in 2002; Mrs Carter entered on a visitor visa. In 2002 she started a full time course of education and applied for a student visa. In 2003 she started a law degree and studied until May 2006 when she became ill.
16. Between 2002 and September 2006 she lived in a number of privately rented properties. She did not always notify the Council Tax department when she left a property and she did not submit a student exemption certificate.
17. In September 2005 Mrs Carter was joined by her eldest daughter, Connie. Her daughter entered the UK on a student visa and remains in full time education. Under the terms of a student visa it is possible to work for up to twenty hours a week.
18. In May 2006 Mrs Carter started to feel unwell and in July she went to the Accident and Emergency department. She was admitted to hospital and diagnosed as having a range of complex health needs including cancer, pneumonia and shingles. It was also discovered that she had other long-term health needs.

Social Services

19. Mrs Carter was then referred to Social Services. She was allocated a specialist social worker who has provided help and support ever since. The social worker discovered that Mrs Carter was living in very poor conditions. Social Services immediately removed them from the property and placed them in emergency accommodation.
20. At that time Connie was caring for her mother, looking after her siblings and providing the family's only income. But, due to her student status, she could not earn enough money to support the family.
21. In September 2006 Mrs Carter applied to the Home Office for Leave to Remain under Articles 3 and 8 of the Human Rights Act. She is still waiting for her application to be determined. In the meantime she remains unwell, is not allowed to work and is not allowed to claim any benefits. Since September 2006 Mrs Carter has been totally reliant on support from Social Services who pay the rent, Council Tax and provide a basic subsistence allowance. Mrs Carter is being

assisted under the 1948 National Assistance Act; people are generally only eligible for help under this Act if they are destitute and have no other way of supporting themselves.

Council Tax recovery

22. Between March 2004 and November 2006 the Council obtained a number of liability orders for the previous Council Tax accounts. Mrs Carter said she did not receive any of the liability orders; she told my investigator this was because she was moving around so often. Because liability orders had been obtained the Council was able to instruct bailiffs.
23. In March 2008 the social worker became aware that there were problems with the current Council Tax which Social Services were responsible for paying. Whilst speaking to Council Tax officers she became aware of the Council Tax arrears for the previous properties. When my investigator made enquires she was told that Mrs Carter had arrears of £1370.95. This related to four different properties and included court costs; this figure does not include the bailiff fees.
24. In the week starting 14 April 2008 bailiffs visited Mrs Carter seeking payment of £1723.87. Mrs Carter was very upset and distressed by the visit. My investigator has seen records which prove that the bailiffs visited during the week of 14 April 2006 and on 15 May and 22 July 2008.
25. Mrs Carter visited the Council in April 2008 and explained that she had been seriously ill and was being assisted by Social Services. The Council Tax officer put a hold on the bailiff action and sought further information from the social worker.
26. The social worker spoke to a Council Tax officer on 22 April 2008 about the Council Tax arrears and the involvement of the bailiffs. The social worker confirmed that the family had been totally reliant on support from Social Services since September 2006 and she explained that Mrs Carter had been a full time student for the period in which the arrears had arisen. After the phone call the social worker faxed a letter to the Council Tax department which stated that Mrs Carter had complex health needs and explained that the family was dependent on support from Social Services. The letter also explained that the family had no goods so there was nothing for bailiffs to collect. My investigator has read the letter written by the social worker on 22 April 2008.
27. My investigator has seen Council Tax records which state that a fax was received by the Council Tax department on 22 April 2008 and that it was passed to an officer for advice; this appears to refer to the letter from the social worker. However, when my investigator interviewed Officer A, an officer from the Council Tax department, she was told that the Council had no knowledge of the letter; the officer appeared to be unaware of the letter and unaware of Mrs Carter's circumstances.

28. Council Tax records show that the Council authorised the bailiffs to resume recovery action on 8 May 2008. After the next visit from the bailiffs, the social worker again telephoned the Council Tax department. The bailiffs were at that time seeking payment or goods to the value of £1218. The social worker again explained the situation and agreed to send information regarding student exemptions. The Council placed another hold on bailiff action.
29. By July 2008 the bailiffs were again involved. Mrs Carter told my investigator she was extremely distressed by a bailiff visit on 22 July; she was so afraid that she said she spent the rest of the day hiding in the park. The records show that the social worker rang the bailiffs on 22 July and explained they were a vulnerable family. My investigator has seen records which confirm that bailiffs visited on 22 July trying to collect Council Tax arrears.
30. On 23 July 2008 Connie made a complaint to my service about the way the Council was trying to collect the Council Tax arrears. As the complaint had not been through the Council's complaint procedures it was passed to Slough Council for it to consider.
31. The Council then wrote to Connie on 5 August 2008. The letter explained that bailiffs had been instructed to collect Council Tax arrears in respect of four properties. The letter also stated that bailiffs did not visit on 22 July 2008 on behalf of the Council. The letter explained that bailiffs work to a strict code of conduct and would not have behaved in an inappropriate way. Mrs Carter was invited to submit paperwork concerning the alleged visit on 22 July 2008.
32. On 1 August 2008 Mrs Carter and her social worker met with two duty Council Tax caseworkers; my investigator has seen Council Tax records which confirm that the meeting took place. They provided details of the family's circumstances since 2002 and handed in various documents including another copy of the letter that the social worker had written on 22 April 2008. Mrs Carter was given a receipt confirming she had submitted evidence. Mrs Carter was asked to provide further proof of her student status. She had submitted exam results but the Council required further information; Mrs Carter told my investigator that the department had previously told her that her exam results would be sufficient to prove her student status.
33. Following the meeting the social worker sent an email to one of Mrs Carter's colleges seeking proof of student status. The social worker told my investigator that it had proved difficult to obtain the proof because the college had moved offices. Some information has since been received but not in the form of an exemption certificate. It now seems unlikely that it will be possible to get a student exemption for this particular college (which relates to study in 2002-2003).
34. Bailiff records show that further attempts to collect the debts were made in September, October and November 2008.

35. In November 2008 Connie made another complaint to my office. I decided to investigate because the Council had had an opportunity to address the complaint. On 10 November Connie rang my office; she was very distressed and said the bailiffs were due to return at 6pm with the police. My investigator asked for an immediate hold to be put on all bailiff action. The Council agreed to this request.
36. When my investigator made written enquiries she asked the Council to consider writing off the debts. The reason for the request was because Mrs Carter was unable to pay and the usual recovery options were not appropriate for the following reasons:
- her immigration status prohibits her from working; so the Council cannot ask for an attachment of earnings;
 - her immigration status means she cannot claim benefits; so the Council cannot ask for deductions from benefits;
 - she has no goods or possessions so there is nothing for the bailiffs to levy distress on;
 - she could be asked to attend the magistrates court but it seems unlikely that the magistrates would commit her to prison. Following a means enquiry it is possible that the magistrates might order the debt to be written off. This option would incur additional court costs for the Council.

The Council did not respond to this request for the debt to be written off.

37. After my investigator spoke to officers and inspected files she asked the Council to recall the warrants from the bailiffs. The Council replied by saying that the case was on hold.

The Council's view

Council Tax department

38. In response to my enquires the Council provided the following information; this information has been gained from the records, the interview with Officer A and a written response.
39. Mrs Carter has never paid any Council Tax apart from one payment of £55. She has also never provided proof of her student status.
40. Liability orders had been obtained and the use of bailiffs was a legitimate way to collect the debt.
41. Officer A was unaware of the letter which the social worker wrote on 22 April 2008.

42. Officer A was unaware of the meeting which took place on 1 August 2008 between Council Tax officers, Mrs Carter and the social worker. Officer A told my investigator that they do not meet with tax payers.
43. The Council denied that bailiffs, acting on behalf of the Council, visited Mrs Carter on 22 July 2008. The Council found no evidence that the bailiffs had behaved inappropriately.
44. The Council stated there is no specific policy regarding vulnerable people; but when the department becomes aware that a person is vulnerable then their case is flagged with a specific code. My investigator was told that Mrs Carter had not been flagged as a vulnerable person.
45. Officer A explained that if a person claims to be unable to pay their Council Tax then they will be asked to provide documentary evidence. Their case will then be passed to the Welfare Team who will carry out a financial assessment. If appropriate, the person will be given advice on increasing their income; for example, by claiming benefits. If it is accepted that the person is unable to pay (as opposed to being unwilling to pay) then consideration will be given to writing off the debt. Mrs Carter was not passed to the Welfare Team. I have seen no evidence of a written policy covering this approach.
46. Officer A told my investigator that if Mrs Carter provided proof of student status then it was likely that all the arrears and costs would be removed from the accounts. He was confident that this would happen because he was aware that Mrs Carter had a student visa which suggested she would be eligible for a discount.

Social Services

47. Social Services is a department of the Council.
48. Since September 2006 Social Services have funded Mrs Carter's accommodation, Council Tax and basic living costs. This help is provided because Social Services accept that the family is vulnerable, in need and destitute.
49. The social worker has provided substantial help and support to the family. She told my investigator that it has been difficult to obtain the proof of student status for Mrs Carter. Some information has been obtained but not in the form of student exemption certificates.
50. The social worker has provided written and verbal information to the Council Tax department explaining Mrs Carter's circumstances. The Social Worker told my investigator that the involvement of the bailiffs has caused a lot of distress to Mrs Carter who is often in poor health.

Council's comments on the draft report

51. The Council pointed out that it was difficult to link the information about Mrs Carter as an individual with the various different Council Tax accounts that she was liable for. Mrs Carter had moved a number of times and not all the information about her was linked to every account. The Council thought that if the letter sent by the social worker had been linked to every account then there may have been a different course of events during 2008. But the Council also said that it did not think the letter offered substantial evidence of vulnerability. The Council said that links were being introduced to minimise the risks of such a situation happening again. However, the Council also said that the involvement of Social Services does not always mean that a case should be classified as vulnerable.
52. The Council pointed out that it responded promptly to the complaint that Connie submitted to my office in July 2008. In the reply Mrs Carter was asked to submit a student exemption certificate but she has not done so.
53. The Council accepts that the bailiffs did visit on 22 July 2008; the Council contacted the bailiffs in response to Connie's complaint and was told that there had been no visits from the bailiffs since 14 July. The Council believes the confusion arose because of the different accounts for which the bailiffs had been instructed to collect Council Tax arrears. The Council found no evidence that the bailiffs behaved inappropriately and denies that the police would have attended. The Council stressed that no other complaints had been received about this firm of bailiffs in the financial year 2008/09.
54. The Council said that exam results would not be sufficient to prove that a person qualified for exemption from Council Tax. But, the Council also said that full consideration should have been given to writing off the arrears in August 2008 when it had evidence of Mrs Carter's education history. It thinks that bailiff activity should have been suspended at that stage.
55. The Council explained that Council Tax staff do not meet directly with tax payers but 'My Council', the Council's front face contact centre staff do frequently meet with tax payers to understand and resolve their problems, including Council Tax issues.
56. The Council expressed surprise that I had asked for the arrears to be written off when I first contacted it about the complaint. Although it had not responded to the request the Council stressed that it had suspended bailiff action.
57. The Council offered to settle the complaint on the basis that the arrears would be written off and procedural improvements introduced. The Council was, however, reluctant to pay compensation to Mrs Carter; this is because it feels this problem could have been avoided if Mrs Carter had submitted a student exemption certificate.

Conclusion

58. Mrs Carter should have provided proof of her student status. If she had done so then it is unlikely that Council Tax arrears would have arisen. Given that she did not do this I cannot criticise the Council for obtaining liability orders and for pursuing the debt through the bailiffs. I have not identified any administrative fault before April 2008.
59. However, in April 2008 the Council Tax department was given evidence that Mrs Carter was vulnerable. There is proof that the evidence was received, and bailiff action was at times put on hold as a consequence; but the key evidence about the family's vulnerability was overlooked. It is disappointing that the social worker's letter was never taken into account despite being submitted on at least two occasions. And, despite enquires being made by my investigator, Officer A seemed to be totally unaware of the existence of the letter. And, I am very concerned that Officer A should have denied that the meeting of 1 August took place when it is clearly stated in the records.
60. I welcome the Council's statement that changes are being introduced to ensure that information about tax payers will be linked to each account.
61. In my view the Council Tax department was given information in April 2008 which should have caused Mrs Carter's accounts to be flagged as vulnerable and her case should have been passed to the Welfare Team for assessment. There is no evidence that this happened. And, given the evidence that Mrs Carter is ill, prohibited from working or claiming benefits, has no possessions or money, and is totally reliant on support from Social Services, then I think it would have been appropriate for an immediate hold to have been put on all bailiff action; consideration could then have been given to whether Mrs Carter had the means to pay. This did not happen; instead bailiffs were allowed to continue to pursue the debt. I think this was administrative fault which caused an injustice to Mrs Carter.
62. The Council has said that the social worker's letter did not provide substantial evidence of vulnerability but it thinks that bailiff action could have been suspended from August when it received further information about Mrs Carter's educational history. I disagree. In my view the social worker's letter should have alerted Council Tax staff to the need to make further enquires about Mrs Carter's circumstances. And Mrs Carter should have been classed as a vulnerable person in April 2008.
63. I do not understand why, when my office passed the complaint to the Council in July 2008, the Council failed to identify the vulnerability issues involved in this case. By then the social worker had made several calls to the Council Tax department and faxed her letter to the department.

64. There is a lack of awareness within the Council Tax department of the evidence which is in the records. There is also a procedural weakness in the lack of a written procedure to identify and take action in relation to vulnerable people. However, I was pleased to read that the Council is aware of these failings and will introduce procedural improvements.
65. If the case had been passed to the Welfare Team in April 2008, and a hold placed on the bailiff action, then Mrs Carter and her family would have been spared significant stress and upset. The Council Tax department could then have worked with Mrs Carter and the social worker to try to obtain the proof of student exemption. I think compensation should be paid to Mrs Carter because of this failing.
66. I find it surprising that there is not better liaison between two departments of the same Council organisation. And 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.

Findings

67. For the reasons explained in paragraphs 58 to 66 I find that there has been maladministration causing an injustice to Mrs Carter.

Recommendations

68. I recommend that the Council should write off the arrears and the costs.
69. I also recommend that the Council should pay £250 for the distress caused to Mrs Carter and her family.
70. I also recommend that the Council implement a written policy on dealing with vulnerable people.
71. And I recommend that the Council implement a policy on how to deal with cases where the tax payer is totally reliant on support from Social Services.
72. Finally I recommend that a formal link should be established between the Council Tax Welfare section and Social Services to prevent similar situations from arising in the future.

73. The Council should provide proof of all the procedural improvements, including those which it has identified itself in the response to the draft report, within three months of the report being issued.

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