

Report

on an investigation into complaint no 10 007 469 against Slough Borough Council

4 April 2011

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Key to names used

Mr Worden

The complainant

Report summary

Subject

Mr Worden had not paid his council tax and the Council instructed to bailiffs to recover the debt. When unable to gain access to Mr Worden's home the bailiff 'levied' on (ie seized) a door mat and charged fees of £230 for this action. When Mr Worden complained to the bailiff firm and then the Council he was told the fees were legal. The Council then decided to instruct the bailiffs to withdraw the fees.

The Ombudsman found that it was unreasonable to levy on such a low value item and to charge fees for doing do. The bailiff firm and the Council should have realised much sooner that this was unreasonable. There is evidence that is not uncommon for other bailiffs to levy on low value items and charge fees and so the Ombudsman is issuing this report as matter of public interest.

Finding

Maladministration, no injustice.

Introduction

- 1. The complainant, Mr Worden, had not paid his council tax. The Council took recovery action and instructed bailiffs to collect the debt. Mr Worden says that the bailiffs, having failed to gain entry to his property, "levied" on (ie seized) his door mat and charged him fees of £274.00.
- 2. My role is to consider complaints of service failure and maladministration causing injustice. I must consider whether the Council or its agents have acted reasonably in accordance with the law, its own policies and generally accepted standards of local administration. If the Council has acted with maladministration, I consider whether injustice has arisen, and any appropriate remedy for that injustice.
- 3. My investigator has considered the complaint and the documents provided by Mr Worden, discussed the issues with him, made enquiries of the Council, considered the comments and documents it provided and has interviewed the Council's Council Tax Manager. The bailiff involved no longer works for the firm and my investigator was unable to interview him. I issued a draft of this report to all parties, and have taken into account the comments made.

The Ombudsman's powers

- 4. My powers are defined by the Local Government Act 1974 as amended by the Local Government and Public Involvement in Health Act 2007. One restriction on my powers is that normally I may not investigate a complaint unless it was made to me, or to a councillor, within 12 months of the date when the complainant first became aware of the matter complained about¹. But I do have discretion to disregard this restriction.
- 5. Another restriction on my powers is that I cannot investigate a complaint where the complainant has an alternative remedy by way of proceedings in a court of law, and it would be reasonable for them to use that route².

The law as relates to bailiffs and council tax

- 6. Where a sum of council tax is unpaid the Council may seek an order from the magistrate's court known as a liability order. This confirms the amount owed and who is liable to pay it. The Council then has a number of options available to try to pursue the debt, one of which is instructing bailiffs.
- 7. The law concerning bailiffs is a combination of statute law, case law and common law. The Tribunals, Courts and Enforcement Act 2007³ provides for major
- 1 Local Government Act 1974, Section 26(B)
- 2 Local Government Act 1974, Section 24(6)(c)
- 3 Chapter 1 of Part 3 and Schedules 12 and 13

- changes to the law; bringing together in one unified system enforcement for rent, local taxation, parking or debt recoverable in the county or high court by 'taking control of goods'. However these provisions have not yet been enacted.
- 8. In 2002 the then Lord Chancellor's Department issued National Standards for Enforcement Agents. This was issued by Government to cover the activities of bailiffs and, in its own words
 - "...does not replace local agreements, existing agency codes of practice or legislation; rather it sets out what the Department, those in the industry and some major users regard as minimum standards."
- 9. Regulation 45 of The Council Tax (Administration and Enforcement) Regulations 1992 gives the Council power to instruct bailiffs to collect a debt. The Regulations give some detail about how bailiffs should do this. They are reproduced in the appendix to this report
- 10. As part of the process of council tax recovery bailiffs may identify goods to be removed and sold to pay the debt, a process known as a levy of distress. If the debtor makes an agreement to pay then the goods may be left on the premises; this is known as a walking possession. Otherwise the goods may be removed and sold at public auction.
- 11. The bailiff may make charges for visits and levying distress, as laid out in Schedule 5 of the Council Tax (Administration and Enforcement) Regulations 1992 (as amended).
- 12. The law says that distress should be reasonable and not too great⁴. The National Standards say
 - "Enforcement agents should take all reasonable steps to satisfy themselves that the value of the goods impounded in satisfaction of the judgement is proportional to the value of the debt and charges owed."
- 13. If a debtor is dissatisfied with the costs and fees charged they can apply to the county court for the charges to be assessed. This must be done within three months of the receipt of the bill for the charges^{5.} The court can then decide if the costs were legal, reasonable and applied at the correct point. A debtor may also make a 'Form 4' complaint to a court against an individual certificated bailiff.
- 14. Regulation 46 of the Council Tax Enforcement Regulations says that a person aggrieved by the levy, or an attempt to levy, may appeal to a magistrates' court. It

⁴ Chapter 4 of the Statute of Marlborough, 1267

⁵ Section 47.7 of The Civil Procedure Rules 1998, Statutory Instruments 1998 No. 3132

- may be possible for such an action to be brought for distraining⁶ on items of very low value, but I am not aware of such a case ever having been brought.
- 15. At the time these events occurred there was no single body which dealt with complaints about the actions of bailiffs. Bailiffs firms should have their own complaint procedure, as the firm involved here does. There were two major professional associations, the Association of Civil Enforcement Agencies and the Enforcement Services Association who would consider complaints about their members; in both cases there was a referral to an independent panel if the complainant was not satisfied. The firm in this case was a member of both associations. On 26th January 2011 the members of both bodies voted to merge into one association to be called the Civil Enforcement Association. In addition to this, as agents of the Council, any complaint about the bailiffs should go through the Council's own complaint process.
- 16. The events complained about happened more than 12 months before Mr Worden's complaint to the Ombudsman. But the disparity between the value of the goods distrained upon and the costs charged caused doubt about the reasonableness of the approach taken by the bailiffs, and I have exercised my discretion to investigate.
- 17. Mr Worden did make a 'Form 4' complaint to the court. However I understand he tried to take action against the firm, not against the individual certificated bailiff. As this was procedurally incorrect the court rejected the application. Given this I consider the proceedings (against the firm not the individual) to be misconceived, and so do not restrict my ability to investigate.
- 18. Mr Worden could also have asked for the costs to be assessed by a court and may have been able to bring an action for unreasonable distraint. Again, given the undisputed facts of the case it seems unreasonable for him to be put to the cost and trouble of going to court in this way when making a complaint to the bailiff firm or the Council should have resolved this. So I have exercised my discretion to investigate.

Investigation

- 19. Mr Worden had not paid his council tax for 2006/07, 2007/08 or 2008/09. The Council took legal action and obtained liability orders. Mr Worden made arrangements to pay, but did not keep them. In August 2008 the Council passed the liability orders to their bailiffs.
- 20. A bailiff visited Mr Worden's address in late August 2008 but made no contact. They left a letter and charged £24.50; the statutory charge for a first visit. A second visit was made in late September; the bailiff spoke to Mr Worden who

was noted as being aggressive and insisted on dealing with the Council. A further fee of £18 was properly added to the debt. Mr Worden then telephoned the bailiff's office, and made an arrangement to pay the debt. In March 2009 he failed to make the agreed payments.

- 21. The liability orders were then passed to an experienced bailiff who had worked for the firm for eight years and had sat the Enforcement Services Association examination. In April 2009 the bailiff visited. According to the bailiff firm Mr Worden opened the door, but refused to allow the bailiff access to his home. The bailiff began to list goods for a levy, starting with the door mat, and then intended to list items he could see in the hall, but could not gain access to. Mr Worden then closed the door. The bailiff finished the levy on the door mat and left a Notice of Distress and Inventory.
- 22. According to the Notice the bailiff had attended to remove goods for a debt of £1,050.71; this sum being pre-printed on the notice. The same notice has a handwritten note of the debt after levy being made up of –

£828.93 council tax

£50.00 as a levy fee

£224.50 for Attendance/Removal costs.

£1,103.43 total

The notice said the bailiff would return within five days to take the goods and sell them at public auction.

- 23. In April 2009 Mr Worden called the Council to say he wanted to make a complaint about the levy on his door mat. He also wrote to the bailiffs to say the door mat was not his. The bailiffs asked him to prove this. In May 2009 after being contacted by Mr Worden, one of the Council's officers asked the bailiffs to accept an arrangement. This was agreed; although payments were made late.
- 24. In June 2009 Mr Worden questioned the costs with the bailiffs, suggesting this was an irregular levy on a low value item. In response they said –

"I can confirm that the Levy Fee of £50.00 and Attendance Fee of £180.00 will remain on your above account as you are liable for the charges that have been incurred on your account.

When making an arrangement, a bailiff needs to levy on anything available to secure the debt. Therefore as he was unable to enter the property, the doormat outside your property was levied on."

25. In April 2010 Mr Worden emailed the Council and raised his points about the levy on the door mat. He said if his complaint was not resolved he would go to the

Local Government Ombudsman. He then rang the Council. The officer who took the call checked with the bailiffs who said they could levy on the goods. The officer's note of the conversation then says –

- "..... emailed [three officer's initials] for decision on whether these costs would stand as he will go to the Ombudsman if refused."
- 26. In response the Council's Council Tax Manager telephoned Mr Worden and said the charges were correct. At the end of July Mr Worden made his complaint to me.
- 27. In August 2010 a Council Tax Officer wrote to Mr Worden to say the levy and attendance fees had been removed; the arrangement with the bailiffs was reinstated and a separate arrangement was made to pay the 2008/09 and 2009/10 council tax. It is unclear why the decision was made to remove the fees.
- 28. The Council's Council Tax Manager told my investigator that the bailiffs confirmed that the Attendance/Removal costs of £224.50 were incorrect and had been removed. She also said that levying on low value items was not normal procedure and she believed that the bailiff may have been frustrated by the non-payment. She said this issue had never arisen with the bailiffs before and she had made it clear to the bailiffs that this sort of behaviour should not happen in the future.

My concerns with this case

- 29. There are several issues about the individual bailiff's actions and the response of the firm and the Council which concern me.
- 30. The bailiffs said in their letter to Mr Worden that "When making an arrangement, a bailiff needs to levy on anything available to secure the debt." In my draft report I suggested this was a misunderstanding of the law. In response the bailiffs said that the law does not make any provision for arrangements. This is correct; any arrangements made to pay council tax (other than the statutory instalment scheme) are at the discretion of the Council or their agents. But the statement was that the bailiff *needs to* levy on something before making an arrangement; if by 'needs' the bailiffs mean 'by law' they were mistaken. If they meant this was their *policy* I am not clear how they make arrangements when they are contacted at an earlier stage in the recovery process before they have levied on goods.
- 31. A bailiff may make an arrangement with a debtor without having levied on anything; if the arrangement is broken they will have to return and try to levy on goods. If the bailiff has levied and an arrangement is then broken the bailiff may return and remove the goods. The bailiff's statement quoted in paragraph 24 cannot be correct, and appears to be made to justify the levy on the door mat and the charging of fees.

- 32. In their response to my draft report the bailiffs said that the levy and the fees were legal. But they also then say that the levy and fees were an error. It seems that the Council defended the process when Mr Worden first contacted them; but now says such a levy was not appropriate. There seems to me to be an inconsistency here.
- 33. But even if the levy had been made on something of a more reasonable value I also have concerns about the accuracy of the figures. The notice of distress and inventory dated 27 April 2009 says that the "attendance/removal" costs are £224.50. The letter from the bailiffs of 9 June 2009 says the attendance fee is £180.00. If Mr Worden had paid the fees at the time of the bailiff's visit then he would, it seems, have been overpaying. The only explanation I have been given for the discrepancies is that a mistake was made.

Conclusion

- 34. Mr Worden had not paid his council tax as he should have. He owed a considerable sum to the Council and it is right and proper that it took enforcement action against him, including the use of bailiffs. But non-payment of council tax, no matter how large the sum owed or the behaviour of the debtor, is no reason for debt recovery officers not to act reasonably when trying to recover a debt.
- 35. Bailiffs will not always be able to find goods of sufficient value to clear the debt and the costs, and it is entirely legal to distrain on goods of a lower value and charge the statutory fees for doing this. It will be a matter for the judgement of the bailiff as to how reasonable the disparity between the potential value of the goods and the debt is. In some cases it will be appropriate for the debtor to challenge the reasonableness of such a levy in the courts; that will depend on the facts of each case. But in some cases, and this is one, the unreasonableness of the action is apparent and there is no need for legal action to establish this.
- 36. In this case I consider that disparity was so great that any reasonable person would have concluded that the levy on the door mat should not have been made. As the levy should not have been made the fees should not have been charged. The bailiff was also at fault in charging what appears to have been too great a sum for the attendance fee.
- 37. When the bailiff firm and the Council considered the concerns raised by Mr Worden they concentrated on the legality of the situation and did not take a view on the reasonableness of the action.
- 38. I find that the distraint on the door mat, the charging of the fees for this, and not considering the reasonableness of this action were maladministration.
- 39. It is for me to consider whether any injustice has been caused to Mr Worden and, if so, whether this requires a remedy. The Council has cancelled the costs and fees, and has instructed the bailiffs that such low value levies should not happen

- again. Given this and taking into account Mr Worden's failure to pay his council tax, I do not think any significant injustice has resulted and therefore no financial remedy is required.
- 40. I note the action Slough Borough Council and the bailiffs have taken in acknowledging they were wrong and withdrawing the fees. But I am issuing this report to draw attention to the case for two reasons. Firstly, information I have received from debt advice agencies is that the practice of levying on low value items and charging fees for such levies is not uncommon I should add there is no evidence apart from this case that Slough Borough Council and its bailiffs do this. This report should send a clear message that this practice may be unreasonable. Secondly, if bailiffs and their employers are to properly deal with complaints, they should consider all the circumstances and take a wider view of the issues than just the legality of their own actions.

Dr Jane Martin Local Government Ombudsman 10th Floor Millbank Tower Millbank London SW1P 4QP 4 April 2011

Appendix – extracts from the Council Tax (Administration and Enforcement) Regulations 1992

Distress

- **45.** (1) Where a liability order has been made, the authority which applied for the order may levy the appropriate amount by distress and sale of the goods of the debtor against whom the order was made.
- (2) The appropriate amount for the purposes of paragraph (1) is the aggregate of
 - (a) an amount equal to any outstanding sum which is or forms part of the amount in respect of which the liability order was made, and
 - (b) a sum determined in accordance with Schedule 5 in respect of charges connected with the distress.
- (3) If, before any goods are seized, the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the authority, the authority shall accept the amount and the levy shall not be proceeded with.
- (4) Where an authority has seized goods of the debtor in pursuance of the distress, but before sale of those goods the appropriate amount (including charges arising up to the time of the payment or tender) is paid or tendered to the authority, the authority shall accept the amount, the sale shall not be proceeded with and the goods shall be made available for collection by the debtor.
- (5) The person levying distress on behalf of an authority shall carry with him the written authorisation of the authority, which he shall show to the debtor if so requested; and he shall hand to the debtor or leave at the premises where the distress is levied a copy of this regulation and Schedule 5 and a memorandum setting out the appropriate amount, and shall hand to the debtor a copy of any close or walking possession agreement entered into.
- (6) A distress may be made anywhere in England and Wales.
- (7) A distress shall not be deemed unlawful on account of any defect or want of form in the liability order, and no person making a distress shall be deemed a trespasser on that account; and no person making a distress shall be deemed a trespasser from the beginning on account of any subsequent irregularity in making the distress, but a person sustaining special damage by reason of the subsequent irregularity may recover full satisfaction for the special damage (and no more) by proceedings in trespass or otherwise.
- (8) The provisions of this regulation shall not affect the operation of any enactment which protects goods of any class from distress.

(9) Nothing in the Distress (Costs) Act 1817, as extended by the Distress (Costs) Act 1827, (which makes provision as to the costs and expenses of the levying of certain distresses) shall apply to a distress under this regulation.

Appeals in connection with distress

- **46.** (1) A person aggrieved by the levy of, or an attempt to levy, a distress may appeal to a magistrates' court.
- (2) The appeal shall be instituted by making complaint to a justice of the peace, and requesting the issue of a summons directed to the authority which levied or attempted to levy the distress to appear before the court to answer to the matter by which the person is aggrieved.
- (3) If the court is satisfied that a levy was irregular, it may order the goods distrained to be discharged if they are in the possession of the authority; and it may by order award compensation in respect of any goods distrained and sold of an amount equal to the amount which, in the opinion of the court, would be awarded by way of special damages in respect of the goods if proceedings were brought in trespass or otherwise in connection with the irregularity under regulation 45(7).
- (4) If the court is satisfied that an attempted levy was irregular, it may by order require the authority to desist from levying in the manner giving rise to the irregularity.