



Dr Jane Martin  
Local Government Ombudsman  
DX702110  
COVENTRY 6

**Please reply to:** Elizabeth Raikes

Chief Executive

Torbay Council

Town Hall, Castle Circus

Torquay, TQ1 3DR

**My ref:** [REDACTED]

**Your ref:** 10 002 564/JM/lc

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**Date:** 12 August 2011

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Dear Dr Martin

**Re:** [REDACTED]

Thank you for your Report dated 04 May 2011. I can confirm that your report has been considered by the Standards Committee on 09 June 2011 and it was also presented at Full Council meeting held on 13 July 2011.

The Council has given careful consideration to your recommendations however unusually, the Council has taken the decision not to implement your recommendation to award [REDACTED] the sum of £25,000. The reasons for this are as follows:

- i) The Council accepts the failings in respect of record keeping but does not believe that this caused an injustice to [REDACTED] to the extent of £25,000.
- ii) The Council believes that it made every effort to contact [REDACTED], as evidenced by ;

- Warrant of Execution as a means of enforcement

As you are aware, after following the Council's normal procedure for recovering unpaid council tax, the Council obtained a Liability Order dated [REDACTED]. The Council instructed bailiffs. The bailiffs made 15 unsuccessful visits between 14 August 2006 and 05 April 2007.

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If you require this in a different format or language, please contact me.

Following, a second Liability Order obtained on [REDACTED] and following its normal recovery procedure for the second time, placed the matter in the hands of externally instructed solicitors on 02 January 2008.

The solicitors sent their letter before action dated 09 January 2008.

- Process Server's notes dated 01 February 2008

The Process Server personally served the statutory demand upon [REDACTED] on 01 February 2008. The Process Server's notes stated that he had told [REDACTED] how to comply with the statutory demand and suggested he seek legal advice.

- Process Server's notes dated 13 March 2008

The Process Server personally served the bankruptcy petition. The notes stated that he had advised [REDACTED] to seek legal advice. Later the same day the Process Server spoke to the Council's solicitors to confirm the petition had been served. The solicitor's telephone note further states that "D (debtor) stated that he only had £800 to live on and couldn't afford to pay".

- Hand-delivered letter from Council to [REDACTED] dated 03 April 2008

Following the above discussions with the Council's solicitors and a meeting between the Case Officer and his manager (unrecorded meeting), the Case Officer arranged to have a letter personally served upon [REDACTED]. The letter included details of the appointment that had been arranged for [REDACTED] to see the Citizens Advice Bureau on Friday 18<sup>th</sup> April 2008 together with 2 forms for him to complete. One form to claim council tax benefit together with a means enquiry form.

- Hand-delivery of letter on 07 April 2008

The Process Server was instructed to ask [REDACTED] to contact the Council to discuss his circumstances. This action was recorded as being completed in an email sent to the Council's solicitors dated 07 April 2008.

The Case Officer specifically recalls the telephone call with the Process Server who confirmed the letter had been delivered. The Process Server confirmed that [REDACTED] appeared to have understood the situation was serious and needed to do something about it.

Whilst no contemporaneous record was made of the telephone call with the Process Server, the Case Officer compiled a chronology of the case dated 19 February 2009. His recollection of the situation accords with [REDACTED] own

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account of the meeting with the Process Server on 07 April 2008 (see [REDACTED] letter to LGO dated 05 July 2010). The Process Server was under the impression that [REDACTED] was going to resolve the situation and passed this on to the Council.

The Case Officer arranged to have the letter personally served upon [REDACTED]. The only reason to have gone to these lengths would have been to obtain information through a discussion with the Process Server as to the outcome of the service. .

The Council was under the impression that [REDACTED] had read and understood this letter. The first the Council knew that this letter had not been read was upon receipt of your letter dated 05 July 2010 enclosing [REDACTED] complaint.

- Charging Order as a means of enforcement

Consideration was given to the question of utilising charging order proceedings. As you know, a Land Registry search was undertaken on 03 January 2007 but as the property was not registered the Council could not be certain about ownership. Even if, the Council considered that [REDACTED] owned the property, the Council had no evidence and could not prove ownership to the Court.

It is on record that the question of using a charging order was discussed with the Council's solicitors as late as 01 May 2008. It was confirmed that it was not possible due to the fact the property was unregistered.

- Attachments of earnings and committal proceedings as a means of enforcement

Both of these procedures were considered by the Council. I accept there is no record of these discussions. [REDACTED] was not working so an attachment of earnings was not possible and due to [REDACTED] elusiveness, it was considered that he was unlikely to attend a court hearing.

- Decision to proceed with bankruptcy

On or around 28 April 2008 [REDACTED] will have had the opportunity to halt the process and pay the arrears of Council Tax either in full or by instalments having been advised through many different means on no less than 27 occasions (council tax bills, correspondence, bailiff visits and process server visits).

It took the Council almost 2 years before reaching the point of the making [REDACTED] bankrupt.

With the exception of a debtor who is incapable of dealing with his own affairs, the debtor will have made decision not to pay his council tax. The Council followed its own procedure and could not verify that [REDACTED] had ill health issues and therefore made a decision to proceed with bankruptcy.

iii) The Council does not accept that it was able to **evidence** details of [REDACTED] health and economical wellbeing. Information as to [REDACTED] circumstances was received and appropriately considered and further information sought. The information did not amount to an evidential basis as to [REDACTED] health to the extent that he was incapable of dealing with his affairs. This is demonstrated by;

- The Case Officer recalls having a telephone conversation (unrecorded) with the Process Server when he was advised that he had some doubts about [REDACTED] behaviour. The Process Server could not establish whether [REDACTED] was being evasive or due to illness. The Process Server established that [REDACTED] was not working.
- Following this conversation, the Case Officer made enquiries with the Adult Social Services Duty Team when he was advised that [REDACTED] was not known to them. No record was made of this telephone call.
- S & S Process Invoice dated 01 April 2008  
It appears from the note included on the Invoice, the Process Server raised the question as to whether [REDACTED] was suicidal. The Case Officer discussed the issue with the Council's solicitors on 02 April 2008 and 03 April 2008.
- Letter to [REDACTED] dated 22 April 2008  
The Council heard nothing further from [REDACTED]. The Council contacted Citizens Advice Bureau who confirmed that [REDACTED] had not attended the arranged meeting with them. A further letter was sent on 22 April 2008 advising that it was not still too late for [REDACTED] to contact the Council.

As far the Council was aware, it had no evidence that [REDACTED] was suicidal or that [REDACTED] was incapable of dealing with his affairs. If the Council had evidence to prove [REDACTED] health condition (which showed he was incapable of dealing with his affairs), I am satisfied that the Council would have adjourned the proceedings.

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It is the Council's view that rather than [REDACTED] wellbeing impeding his ability to pay his council tax, [REDACTED] made a considered decision to avoid paying the same, as evidenced by his admittance that he;

- o left his mail on the floor to ensure it would be seen by visitors
- o gave the impression no-one lived at home
- o went out for long walks in order to avoid the bailiffs
- o stayed out of view when visitors called
- o expected his debts would be settled from the winding up of his estate
- o failed to apply for benefits so as not to compromise his dignity

[REDACTED] had not been seen to see a Doctor and was not in receipt of medical treatment at the time of the Council's decision to proceed with bankruptcy. [REDACTED] was subsequently diagnosed with depression and anxiety in November 2008 after approaching the Department for Work and Pensions.

Further the Trustee in Bankruptcy did not believe in January 2009 that [REDACTED] was unable to manage his affairs, as she did not make an application to the Court for [REDACTED] to have a representative, nor did they make an application for the bankruptcy order to be annulled due to capacity reasons.

The Council works very hard to comply with its legal duties under the Disability Discrimination Act 1995 together with vulnerable people. It provides help and assistance to persons found to be suffering financial hardship or having difficulty in managing their own affairs and the Council works alongside the Citizen's Advice Bureau in this regard.

- iv) [REDACTED] had sufficient assets to obtain funding to clear his debts. [REDACTED] made the decision not to do so. If [REDACTED] had acted this would have involved far less cost.

A further example of [REDACTED] actions resulting in additional costs are in relation to the Bankruptcy Order. The Official Receiver was initially going to administer [REDACTED] estate. However, due to [REDACTED] having not surrendered to the bankruptcy proceedings, the Official Receiver instructed a Licensed Insolvency Practitioner, [REDACTED] (Trustee in Bankruptcy).

The Trustee in Bankruptcy [REDACTED] However it took over 4 months before the Trustee was able to progress the administration of [REDACTED] estate.

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- v) The Council believes the excessive cost in this case was due to the appointment of a Trustee in Bankruptcy that could have been avoided as referred to above.

The Trustees' final statement in the sum of £26,064.02 is calculated as follows:

Opening balance	£ 1,378.00
Petitioner creditors costs	1207.50
SWW debt	3940.99
Council tax	2248.05
Interest	698.60
Discounted trustees fees including legal fees, disbursements and VAT	12,500.00
Secretary of State fee	4090.88

I have calculated that [REDACTED] would have been required to clear his debt to South West Water and Torbay Council in any event (including interest) in the sum of £6887.64.

I have also considered that if [REDACTED] had engaged with the Council and the Council would have been able to utilise enforcement by way of a charging order, [REDACTED] would have needed to instruct his own solicitors to deal with the first registration of his property together with the normal disbursements and VAT that would have been payable. I estimate this would have been in the region of £3000.00.

These elements would have cost [REDACTED] approximately the sum of £9,800.

It seems to me that Local Authorities have been criticised in using bankruptcy proceedings simply due to the level of costs incurred by a Trustee which are usually disproportionate to the debt. I accept that there are situations where bankruptcy proceedings are inappropriate where the debtor is incapable of dealings with their affairs due to the Mental Health Act 1983 or severe disabilities which are known (and are evidenced) to the Local Authority.

In all of the comparable cases I have looked at, the debtors were either in contact with the Local Authorities and/or were known to Adult Social Services. That is not the situation in this case. [REDACTED] was not communicating with the Council despite extensive attempts, and checks were made which demonstrated that he was not known to Adult Social Services.

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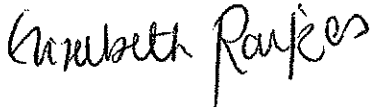
A Local Authority is not debarred from using bankruptcy proceedings simply because the Trustees fees may be disproportionate in relation to the debt, so long as the relevant checks had been made and bankruptcy will be the last resort. As far as I am concerned, bankruptcy proceedings were the last resort and the Council proceeded properly. The Council provides assistance to persons found to be suffering hardship or having difficulty in managing their own affairs and the Council works alongside the Citizen's Advice Bureau. In the past the Council has withdrawn bankruptcy proceedings when evidence came to light which made it inappropriate to continue. If bankruptcy action had not been taken, it seems the only other option would have been to write off the debt. There was not an evidential basis to write off the debt and this would not have been acceptable or fair to other council tax payers.

As I have said the Council accepts failings in its record keeping and has written to [REDACTED] apologising for this and offered £1,000 by way of compensation.

The Council has also put in hand arrangements to update its policy for the procedure for unpaid Council Tax.

I trust you will accept the Council's position for the reasons set out above.

Yours sincerely



Elizabeth Raikes  
Chief Executive