

# Further report

on an investigation into  
complaint no 10 002 564 against  
Torbay Council

28 March 2012

1. In May 2011 I issued a report on a complaint by Mr Castle (not his real name). He complained that the Council took bankruptcy proceedings against him in response to a council tax debt of £2,248 without having proper regard to his personal circumstances, in particular his mental health.

## **The investigation**

2. Mr Castle has lived at his present address for more than 40 years. He has lived alone since 1992 and before that with his mother, for whom he was the carer during the last year of her life. At that time he was also in full time employment. Mr Castle was made redundant in 1995. He lived off his savings and a small income from his membership of a musical band for the next 10 years or so. He paid all his bills including council tax until about 2006. From that time he describes himself as having followed 'a gradual descent into chronic introspection' and 'mental instability'. He stopped opening his mail in 2004. He left it on the doormat for months at a time, visible through his glass panelled door. He used the back door to access the property and stayed out of sight if callers came.
3. In 2006 Mr Castle's council tax account fell into arrears and the Council followed due process and eventually passed the account to bailiffs for collection. The bailiff made twelve visits to Mr Castle's home between August 2006 and April 2007. Notes from the visits recorded that there were cobwebs over the door and a large accumulation of post behind it. The bailiffs returned the liability order to the Council on 25 April 2007 having been unable to gain access or recover property. The bailiffs had not seen or spoken to Mr Castle at any time. Council tax arrears continued to accrue as Mr Castle was not making any payments.
4. The Council made enquiries with Land Registry to ascertain whether Mr Castle was the owner of the property in which he lived, with a view to registering a charge against the property if he was. Mr Castle was the owner of the property, which had been left to him following his mother's death, but the property was not registered with the Land Registry. The Council did not make any further investigations to seek to establish ownership of the property. The Council next considered committal proceedings but decided that Mr Castle would be unlikely to respond to the court. The Council therefore considered that it would be appropriate to pursue the debt by way of bankruptcy proceedings.
5. Following the issue of a pre-action letter a statutory demand was delivered by a process server, Mr Ash, who noted that he told Mr Castle how to comply with the statutory demand and suggested he seek legal advice. No response was received and the Council decided to commence action in respect of bankruptcy.
6. A bankruptcy petition was therefore obtained on 12 March 2008. On the following day Mr Ash attended Mr Castle's home in order to personally serve the

bankruptcy petition. The Council's notes in respect of Mr Ash's visit record that Mr Ash had some doubts about Mr Castle and had not been able to reach a view on whether Mr Castle was being evasive or was in fact suffering illness.

7. The bailiff for whom Mr Ash worked told my investigator that he recalled Mr Ash reporting that Mr Castle was suicidal, and this was noted on the bailiff's invoice to the Council's solicitor. The solicitor's file also includes a note of a telephone call from the Council referring to concerns about Mr Castle's mental health: the note read 'Could be suicidal - Council to investigate other enforcement options'.
8. The Council says a telephone check was made with social services to ascertain whether Mr Castle was known to them, but that department had no record of him. No record was made of the telephone call. The Council then contacted the Citizen's Advice Bureau and made an appointment for Mr Castle to attend for specialist debt advice. The letter was hand delivered by Mr Ash, and the Council says that he had been instructed to ensure Mr Castle read and understood the letter and that he reported back afterwards that this had been done. But there is no documentary evidence to support this and Mr Castle reports that the letter remained unopened. A further letter was posted to Mr Castle asking him to make contact but this too remained unopened.
9. On 2 May 2008 a bankruptcy order was made against Mr Castle in the County Court. The debt owed to the Council at this time was £2,336.57. It was not until January 2009 when Mr Castle was visited by the person appointed as his Trustee in Bankruptcy that he became aware that he had been made bankrupt by the Council. With the help of a neighbour and following a meeting arranged with the Trustee, Mr Castle cleared the debt in full by taking a loan against his home. Mr Castle reports that after clearing the debt of £2,248.05 he owed to the Council and £3,940.99 owed to a utility company, the additional costs he incurred as a result of the bankruptcy action amounted to some £24,000.

## **My conclusions**

10. The consequences bankruptcy can impose upon a debtor are severe and in selecting options for recovery the impact on the individual debtor should be taken into account. A charging order on the property would have been a less punitive option than bankruptcy, and I found that the Council was at fault in failing to make further attempts to communicate with Mr Castle to establish the facts about the ownership of his home.
11. I expect that decisions about debt recovery should be recorded with evidence that the decision-maker is satisfied that the debtor can adequately defend themselves against the Council's actions. I found that the Council was at fault in failing to conduct and document a full review of the case in light of the information it

received that Mr Castle was possibly suicidal. My view is that if such a review had been undertaken the Council would not have continued with bankruptcy action.

12. I recommended that the Council should provide a formal apology to Mr Castle and pay him £25,000.

## **Events since my report**

13. The Council has refused to pay Mr Castle the compensation I recommended and instead offered to pay £1,000. The Council has noted that the excessive cost in this case was due to the appointment of a Trustee in Bankruptcy which could have been avoided as Mr Castle had sufficient assets to obtain funding to clear his debts. The Council's view is that he made a considered decision not to pay his council tax and that this is evidenced by his statement more than a year after the bankruptcy proceedings that he left unopened mail on the floor to give the impression nobody was at home and went for long walks to avoid the intimidation he felt when bailiffs called.
14. The Council however does not comment on Mr Castle's description in the same statement of his 'gradual descent into chronic introspection' which rendered him unable to deal with day to day matters including his bills. His action in seeking to avoid confrontation and his failure to deal with his bills might reasonably be considered a symptom of his poor mental state at the time and the Council did nothing purposeful to explore this. Although there were 15 visits by bailiffs and a further three by the process server, no attempt was made by a Council officer to engage face to face with Mr Castle to explore his personal circumstances and ascertain the possibility of alternative means of debt recovery (such as his legal interest in the property which had been his home for more than 40 years).
15. The Local Government Ombudsman's Focus Report on the use of bankruptcy for council tax debts<sup>1</sup> refers to the draconian consequences of bankruptcy for affected individuals and the importance of particular measures a council should take to determine whether bankruptcy is a fair and proportionate action before proceeding. Such measures include making reasonable efforts to contact the debtor in person by a home visit if necessary and a case review by a senior officer which includes gathering sufficient evidence about the debtor's personal circumstances and considering whether those circumstances warrant them being protected from recovery action. There is no evidence that Mr Castle was capable of dealing with his own affairs at the time of the recovery action or that bankruptcy was a considered decision taken in the knowledge of potential mental illness after the due weighing of all pertinent facts. What is in evidence is that the Council had

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<sup>1</sup> Can't pay? Won't Pay? Using bankruptcy for council tax debts. The Commission for Local Administration in England; 2011.

been advised that Mr Castle was possibly suicidal, but continued nonetheless with the bankruptcy action.

16. It is not for me to judge capacity under the Mental Capacity Act 2005, and I have not done so, but I can reach a view on how Mr Castle was dealing with his own affairs: his actions demonstrated that he was not dealing with his affairs at all. The Council points out that its agents made a number of personal visits to Mr Castle's home, some of which it says raised a level of concern but did not provide evidence that Mr Castle lacked capacity. The Council however did not act on that concern or take steps to establish evidence of capacity. The Council says that the suggestion that a home visit might have elicited more information from Mr Castle is purely speculative. But the fact is that the Council did not undertake such a visit: if it had done so there would be no need for speculation.
17. The Council takes the view that in the absence of evidence of lack of capacity or any other circumstances which would indicate proceedings were inappropriate, it was duty bound to seek to recover the debt. However, the key point is that the Council had information that Mr Castle was possibly suicidal, and it gave that information no consideration. The Council has confirmed that in the past it has withdrawn bankruptcy proceedings where evidence came to light that it would be inappropriate to continue, and the Council's officers have confirmed that a reference to a debtor being possibly suicidal would lead to bankruptcy action being halted and reconsidered. In this case the Council entirely failed to reconsider, and that was maladministration.
18. In terms of the costs associated with the bankruptcy, it is correct that Mr Castle would have been required to discharge his debt to the Council as well as a debt to the water company which joined in the bankruptcy proceedings. However, having raised £34,967 from the equity release in his home, Mr Castle received only £2,046 after all disbursements, making a total cost of £32,921. The sums owed to the Council and to the water company, plus costs and interest added before the bankruptcy proceedings totalled £8,711. Deducting this from the sum of £32,921 gives a balance of £24,410. The Council correctly states that even if it had taken the less punitive step of obtaining a charging order, there would have been some costs associated with that action too. However, I made my recommendation for a remedy of £25,000 taking account of these facts and having particular regard to the significant impact of bankruptcy action on a debtor as well as the distress caused to Mr Castle and the time and trouble taken in pursuing the complaint. Interest on the equity release made necessary by the bankruptcy action means that the cost to Mr Castle will continue to accrue.
19. The Local Government Act 1974 provides that if the Ombudsman is not satisfied with the Council's response to recommendations a further report shall be issued. I have therefore issued this further report on Mr Castle's complaint and call on the

Council to reconsider its position and make the payment of compensation recommended.

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**28 March 2012**