

Scottish Parliament Region: Central Scotland

Case 200500432: North Lanarkshire Council

Summary of Investigation

Category

Local government: Council Tax

Overview

The complainant (Mrs C) raised a number of concerns about North Lanarkshire Council (the Council)'s actions in pursuing her for outstanding council tax (arrears). She claimed that the Council were unreasonable and did not take account of her situation as she was on benefits and had a disabled child.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) failure to give notice before changing payment agreement (*not upheld*);
- (b) unfair denial of access to a bank account (*not upheld*);
- (c) failure to provide a corrected statement of arrears (*upheld*); and
- (d) pressed unreasonably to take action while complaint was the subject of an Ombudsman investigation (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) provide her with details of the protocol they have put in place with the Sheriff Officers for their dealings with the Council's customers;
- (ii) investigate the failure to provide a corrected statement of arrears and take necessary action to ensure that their method of recording arrears is robust;
- (iii) inform her of the outcome of the test case being taken through court;
- (iv) produce a protocol and guidance for staff on the circumstances when an arrestment can be served, including when it could be appropriate to give consideration to lifting and/or waiving an arrestment fee; and
- (v) apologise to Mrs C for the difficulties she has experienced.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. In May 2005 the Ombudsman received a complaint from a member of the public, referred to in this report as Mrs C, who complained about North Lanarkshire Council's (the Council) handling of her council tax arrears and the subsequent arrestment of her bank account which contained disability benefits for her young son.

2. Mrs C stated that she was contacted by Sheriff Officers in September 2004 about arrears for an address she had lived at with her ex-husband. She stated that she acted on the notice by contacting the DSS to make arrangements for a deduction from her benefits. However, she was told that, as the maximum deduction was already being taken, the Council would have to wait to collect the council tax arrears.

3. Mrs C claimed that she informed both the Council and the Sheriff Officers of the situation and received advice when she visited the Council's one-stop-shop at Bellshill that, whilst the arrangement was not ideal, her payments would be deferred. She stated that she was not trying to shirk her responsibilities and would have come to an alternative arrangement if the agreement to defer payment had not been acceptable. However, she received no further contact and in April 2005 her bank wrote to inform her that her account had been arrested.

4. Mrs C claimed that the Sheriff Officers, acting on the instructions of the Council, refused to allow her access (to part of the arrested funds) and she was left without funds for three days until she could arrange for her income support payment to be made by giro cheque.

5. Mrs C complained that the Council provided incorrect information on the amount of arrears outstanding due to a miscalculation of her liability and had failed to correct it, despite her representations.

6. Mrs C was dissatisfied with the Council's handling of the matter and sought the recalculation of the arrears, lifting of the arrestment and an instalment payment plan put in place.

7. She subsequently complained that the Council were threatening to take her to court if she did not sign a mandate to release funds from her account.

8. The complaints from Mrs C against the Council which I have investigated are:

- (a) failure to give notice before changing payment agreement;
- (b) unfair denial of access to a bank account;
- (c) failure to provide a corrected statement of arrears; and
- (d) pressed unreasonably to take action while complaint was the subject of an Ombudsman investigation.

Investigation

9. I discussed the complaint with Mrs C and made enquiries of the Council and conducted interviews with relevant officers. I obtained documents from Mrs C and copies of the Council's files. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Both Mrs C and the Council have had an opportunity to comment on a draft of this report.

(a) Failure to give notice before changing payment agreement

10. In response to my enquiry on this head of complaint, the Council commented that no agreement had been reached with Mrs C to defer payment of her council tax arrears. They had undertaken an audit into her alleged visit to the one-stop-shop in Bellshill in September 2004 but there was no record of this. They commented that, if an agreement had been put in place, this would have been confirmed in writing.

11. I asked the Council to comment further, in particular whether, as part of their investigation into the matter, they had checked Mrs C's claim that she contacted the Sheriff Officers. Also, whether or not they were satisfied that the Sheriff Officers and the local office handled Mrs C's enquiries properly.

12. In response, it was confirmed that the Sheriff Officers had recorded that Mrs C wrote to them on 16 September 2004 asking why the debt was being pursued, as she was in receipt of income support. However, they had not responded to her query because she had not enclosed a prepaid envelope: this was a prerequisite by them for all correspondents who wished a written response and had been indicated to Mrs C in their correspondence with her.

13. The Council stated that the Sheriff Officers had not informed them that Mrs C claimed to be in receipt of benefit and, as she was no longer resident within North Lanarkshire, they did not have access to any information about any benefit payments.

14. The Council stated that they were satisfied with the way the local office dealt with the enquiries from Mrs C at this time. However, they lacked knowledge about the Sheriff Officers' policy and procedures for dealing with clients and, in the circumstances, would be in discussion with the Sheriff Officers in order to compile an appropriate protocol.

(a) Conclusion

15. There is no evidence to support Mrs C's claim that she reached an agreement with the Council that she could defer making payment of the arrears in her council tax account. There is evidence that Mrs C responded to the notice issued by the Sheriff Officers in September 2004 but I have been informed that a reply was not given because a stamped addressed envelope was not enclosed.

16. It is unfortunate that Mrs C appears to have construed a lack of follow-up from either the Council or the Sheriff Officers as an agreement that further action to collect the arrears would be deferred. In all the circumstances, therefore, I do not uphold the complaint. However, it is unfortunate also that there was no protocol in place between the Council and the Sheriff Officers to pass relevant information to the Council. The gap in their relationship with the Sheriff Officers has been recognised by the Council and they are taking steps to introduce an appropriate protocol. This is commendable.

(a) Recommendation

17. The Ombudsman recommends that the Council provide her with details of the protocol which they have put in place with the Sheriff Officers for their dealings with the Council's customers.

(b) Unfair denial of access to a bank account

18. Mrs C was aggrieved because she complained that, acting on the instructions of the Council, the Sheriff Officers refused to allow her access (to part of the attached funds) and she was left with no funds for three days until she could arrange for her income support payment to be made by giro cheque.

19. The Council provided a copy of the Head of Revenue Services' (Officer 1) letter of 29 April 2005 to Mrs C, which confirmed that this issue was investigated and she was informed that the Council did not instruct the Sheriff Officers to refuse her access to part of the attached funds. I am satisfied from the documentation I have seen that this complaint was adequately investigated by the Council.

(b) Conclusion

20. As the Council investigated and responded to this issue prior to Mrs C's approach to the Ombudsman, this head of complaint is not upheld.

(c) Failure to provide a corrected statement of arrears

21. Mrs C complained that the Council provided incorrect information on the amount of arrears outstanding due to a miscalculation of her liability (calculated until 1999 but she had moved out of the marital home in November 1998). She was dissatisfied with the handling of the matter and sought the recalculation of the arrears amount.

22. In their comments, the Council advised that Mr and Mrs C were registered as liable for council tax for the marital home from 18 August 1995 to 10 December 1998. Additionally, they were registered as liable for the period 1 June 1999 to 1 August 1999 for another property in the same town for which they had applied, and been awarded, a second home discount of 50%. The arrears totalled £1,290.45 and were listed as:

1996 - £607.38

1997 - £115.79

1998 - £483.11

1999 - £84.17

23. The Council commented that:

'All outstanding arrears balances have been checked and are accurate and have not been subject to any further amendment. As a consequence, it is self-evident that there can be no question of a re-calculation and, in the circumstances no prospect of the arrestment being lifted.'

24. However, it was subsequently clarified that the liability for 1999 was incorrect. Officer 1 provided an updated total figure in March 2006 of £1,206.28 which confirmed this.

(c) Conclusion

25. The Council erred in their calculation of Mrs C's arrears and failed to identify the error, despite her formal complaint and my written enquiry. Her complaint is, therefore, upheld.

(c) Recommendation

26. The matter has been resolved with the correction of Mrs C's arrears liability. However, the Ombudsman wishes to be assured that the problem which caused the failure to identify the error earlier has been investigated. The Ombudsman, therefore, recommends that the Council investigate the failure to provide a corrected statement of arrears and take action if necessary to ensure that their method of recording arrears is robust.

(d) Pressed unreasonably to take action while complaint was the subject of an Ombudsman investigation

27. The Council had responded to my enquiry about heads of complaint (a) to (c) when the complainant informed me that they had written to ask her to sign a mandate to release funds from her bank account or they would proceed to take her to court. She stated that she telephoned the contact name in the Council's legal department (Legal Services) and, when she told him that she was on benefits, he told her that she would be refunded the arrestment fee. However, he had telephoned her back with advice that the Council had decided to proceed and use her as a test case to establish whether or not monies which are made up of benefits can be arrested.

28. In response to my enquiry to the Council on this issue, it was acknowledged that it had not been made clear to all the officers who were handling the case that Mrs C had an open complaint with the Ombudsman's office. At the time, I was advised by a Council officer by telephone that no further action would be taken to pursue the arrears pending the outcome of the Ombudsman's involvement. When commenting on the draft report, however, the Council subsequently clarified that, in terms of their statutory obligations, the Council would have no power to defer recovery action solely on the grounds of a referral to the Ombudsman.

29. At interview with Officer 1, I asked how someone like Mrs C, who was on benefits, had her case for outstanding council tax dealt with. He explained that there had been a rationalisation of the service provided by Sheriff Officers in 2004 and the Council now worked with only one firm. The Sheriff Officers

considered all outstanding cases and Mrs C's was identified as being 'old debts'. Notice had previously been given to her of arrears over a period of years and in 2004, and the notice served on Mrs C in September 2004 informed her that she should make arrangements to settle the bill with the Sheriff Officers, without delay, to avoid further action being taken. He explained that, once past the stage of reminders (two in any one financial year), the process for pursuing arrears is summary warrant (which carries a 10% statutory addition). This provides the Council with the power, where an agreement to pay has not been reached, to make an arrestment of the liable party's bank account and/or wages. He confirmed that deductions can be made also from certain government benefits but there is a ceiling on how much can be taken.

30. Officer 1 explained that arrestment of a bank account does not release the funds. The accountholder needs to sign a mandate to allow the amount due in the arrestment to be released to the Council, failing which, the Council can apply to the courts. The alternatives to arrestment open to Sheriff Officers are visits to discuss the arrears and/or attachment made of goods.

31. We discussed the way forward in this case and it was agreed that Officer 1 would consider terms for a payment plan for Mrs C. The payment plan details proposed by Officer 1 were from a starting point of the sum arrested (£693.75). Of this, £356.28 would be applied to the outstanding debt, leaving £850 due (see paragraph 24). The remaining sum – minus the arrestment fee of £40.70 – would be available to Mrs C and repayment of the balance would be set at £25 per month. Mrs C informally indicated that the monthly repayment sum was manageable.

32. I met also with the officer in Legal Services (Officer 2) who was Mrs C's named contact in the Council's letters. The Principal Solicitor (Officer 3) accompanied Officer 2 at the interview. Officer 2 explained that he became involved in the case in August 2005, when he issued a standard letter to Mrs C about proceeding to court action if the funds from her account were not released. The Director of Finance asked Legal Services to raise a test case of council tax arrears where money in a bank account was made up of benefit payments. Mrs C's case was identified as suitable. Officer 2 had corresponded with Mrs C about the monies in her account and was satisfied that it was benefits. He advised at interview that, although in such circumstances he would normally send an instruction to Sheriff Officers to lift the arrestment - and the Council would meet the cost of the fee - he proceeded on the basis that it was

to be a test case. When commenting on the draft report, the Council clarified that an arrestment would normally only be lifted where they were satisfied that the bank account consisted only of current benefits. In Mrs C's case, they were not satisfied that this was the case. In the event, I was advised that the arrestment was withdrawn but this was only because an administrative error in the document (the date) invalidated it. The Council have subsequently confirmed that the administrative error was corrected; the arrestment was not in fact withdrawn but that, in view of the difficulties experienced, Mrs C was not charged the arrestment fee. (The Council provided a letter from Sheriff Officers confirming this.)

33. Officer 3 explained that there was nothing to prevent the arrestment of a bank account where benefit is paid in but this had not been the Council's practice. The Council are proceeding with another 'test' case and, while it could take some time, they would arrange to inform the Ombudsman of the outcome.

34. I asked Officer 3, subsequently, who would pay the costs when the arrestment was withdrawn in similar circumstances to Mrs C's case. He indicated that, where benefits have been arrested, the Council would pay the fee (see paragraph 32). I asked Officer 1 in a subsequent telephone call to clarify in what circumstances the Council would be prepared to waive an arrestment fee and if they would do so in this case. He commented that the practice varies but, if payment of the arrears is made round about the time the notice is served, no charge would be made to the liable party. However, in this case it has subsequently been clarified that Mrs C was not charged the arrestment fee (see paragraph 32).

(d) Conclusion

35. The Council have confirmed, and I accept, that, in terms of their statutory obligations, the Council have no power to defer recovery action solely on the grounds of a referral to the Ombudsman. On this basis, therefore, I do not uphold this complaint. Nevertheless, I have a number of concerns about the information initially given by Council officers and the subsequent information received when the Council commented on the draft report. It is unfortunate that matters were only clarified towards the end of the investigation and were not clarified earlier. I am also concerned that there may be an inconsistency in the authority's approach to the circumstances where an arrestment can be served and the grounds on which it can be withdrawn and the fee waived. In view of these concerns, the Ombudsman makes the following recommendations.

(d) *Recommendations*

36. The Ombudsman recommends that the Council:

- (i) produce a protocol and guidance for staff on the circumstances when an arrestment can be served, including when it could be appropriate to give consideration to lifting and/or waiving an arrestment fee;
- (ii) inform her of the outcome of the test case being taken through the courts; and
- (iii) apologise to Mrs C for the difficulties she has experienced.

37. The Council have accepted the recommendations and will act on them accordingly.

27 March 2007

Explanation of abbreviations used

Mrs C	The complainant
The Council	North Lanarkshire Council
Officer 1	The Council's Head of Revenue Services
Officer 2	The Council's named contact in Legal Services
Officer 3	The Council's Principal Solicitor