

Case 200800100: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Finance; council tax

Overview

The complainant (Mr C) raised concerns when The City of Edinburgh Council (the Council) and their collection agents pursued him for alleged substantial council tax arrears relating to three former addresses which dated back to 1994. He was concerned at the amount of those arrears and differences between the Council and their collection agents as to how much he allegedly owed.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) have failed since March 2007 to provide Mr C with an accurate and comprehensive statement of his indebtedness for council tax (*upheld*); and
- (b) failed to act on Mr C's assertions that his indebtedness for council tax for certain years has been overstated by them (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. The complainant (Mr C) is a single man who has lived in privately rented flats in Edinburgh since 1994, namely, Property 1 (until 19 February 1996); Property 2 (until 31 October 2004); Property 3 (until 1 February 2005) and Property 4 (from 1 February 2005 to date).

2. Early in 2007, The City of Edinburgh Council (the Council)'s collection agents (the Debt Recovery Agents) intimated to Mr C that he owed a substantial amount of unpaid council tax dating back to the 1994/95 fiscal year. Since he had been generally in receipt of state benefit, and eligible for 25% single person's discount, he believed that he did not owe the full amount claimed. After corresponding with the Council and the Debt Recovery Agents, the Council claimed as of 8 July 2008 that Mr C owed a total of some £2104.48 arrears of council tax in respect of his three previous tenancies at Property 1, Property 2 and Property 3. Mr C did not believe that to be the case. He supplied relevant papers which, he stated, demonstrated inconsistency in figures between the Council and their Debt Recovery Agents.

3. The complaints from Mr C which I have investigated are that the Council:

- (a) have failed since March 2007 to provide Mr C with an accurate and comprehensive statement of his indebtedness for council tax; and
- (b) failed to act on Mr C's assertions that his indebtedness for council tax for certain years has been overstated by them.

Jurisdiction

4. Section 10 (1) of the Scottish Public Services Ombudsman Act 2002 (the 2002 Act) states that the Ombudsman must not consider a complaint made more than 12 months after the day on which the person aggrieved first had notice of the matter complained of, unless the Ombudsman is satisfied that there are special circumstances which make it appropriate to consider a complaint made outwith that period. In informing Mr C of my decision to investigate, I drew this section to his attention, but accepted from the evidence that Mr C had endeavoured to pursue the matter regularly with the Council since early 2007.

5. Under section 7(8) (b) of the 2002 Act, the Ombudsman must not investigate a complaint in respect of which the person aggrieved has or had a

right of appeal, reference or review to or before any tribunal constituted by or under any enactment unless the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to resort or to have resorted to the right or remedy. In this connection, persons on state benefit, or who qualify on the basis of their low income, are entitled to claim housing benefit (HB) and council tax benefit (CTB).

6. The Council have, since their creation on 1 April 1996, administered both CTB and HB on behalf of central government in terms of the statutory regulations. They will make payment where an application, made in the prescribed manner, has been duly made and checked. The regulations initially provided for appeals about a failure to award benefit or the amount of HB or CTB awarded to be made to an appropriate Review Board. The maximum period of retrospection, where good cause is shown is 52 weeks. Since July 2002, such appeals are dealt with by the Appeals Service, which is a tribunal for the purposes of the 2002 Act. I considered that Mr C had lost his ability to appeal. I forewarned Mr C, however, that it was not within the Ombudsman powers to direct that the Council award him CTB in retrospect or to refer the matter at this time to the Appeals Service.

Administrative Background

7. The Council administer the collection of council tax on some 200,000 properties in their area and their Revenues and Benefits Division deal with some 40,000 items of correspondence each month. Administratively, they had made a decision not to retain all paper correspondence even where an outstanding debt might still exist. Acting on the basis that it was only the occasional case that would not be resolved after six years, the Council had first kept records at their office for three years and a further three years at a document storage centre. In 2004, as a measure to reduce off-site storage costs, a new document management system with electronic scanning of documents was introduced. The scanned data is in general retained for only two to three years and nothing is now retained off site. The Council's computerised system of billing carried relevant dates of initial billing, reminder, and final notice. In relation to applications to the sheriff for summary warrant on default of payment, a listing by account reference, name and address, amount owed, and date of application to the sheriff is still retained.

Investigation

8. I interviewed Mr C and officers of the Council. Mr C provided me with his correspondence with the Council and the Debt Recovery Agents. I made enquiries of the Council and shared the Council's response with Mr C. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

(a) The Council have failed since March 2007 to provide Mr C with an accurate and comprehensive statement of his indebtedness for council tax; and (b) The Council have failed to act on Mr C's assertions that his indebtedness for council tax for certain years has been overstated by them.

9. Mr C informed me at interview that prior to his present tenancy of Property 4, he had lived as a single person in three other privately rented tenancies in another area of the city. He had until July 2003 been in receipt of state benefit and his previous landlords had been mandated by him to receive his HB direct. Since July 2003 he had been part time self-employed. He understood that his previous tenancy agreements with his landlords made the landlord responsible for paying council tax. With the passage of time, however, he had no papers to confirm that had been the case. Mr C also stated that there were problems with Property 1 and that no mail reached him. In respect of Property 2, the flat next door had been closed yet he understood mail (possibly including his own) was regularly delivered there. With Property 3, the position of the front door was altered. Mr C maintained, therefore, that he had received no contemporary demands for council tax or reminders that he was in arrears. Had he understood that he was liable, he would have submitted appropriate applications for CTB.

10. The Council's Revenues and Benefits Manager commented that between 1994 and 31 March 1996, HB had been handled by the former City of Edinburgh District Council and CTB by the former Lothian Regional Council. After reorganisation of local government in Scotland on 1 April 1996 the two benefits had not been harmonised and dealt with jointly by the Council's Financial Services until 1998. The Revenues and Benefits Manager noted Mr C's statement but pointed out that Mr C was apparently in receipt of state benefit for most of the period and that correspondence from the Benefits Agency (including periodic updating of claims and giro cheques) would have been sent to Mr C at his home address. The Council could find no

correspondence from Mr C prior to late 2006 when he queried their decision to obtain a summary warrant in respect of council tax arrears for the year 2006/07 on Property 4. The Council's Debt Recovery Agents' correspondence with Mr C regarding multiple debts began in January or February 2007.

11. The first listing of Mr C's indebtedness supplied to him by the Debt Recovery Agents for Property 1, Property 2 and Property 3 (which did not include the fiscal years 1996/97, 1997/98 and 2000/01) placed the total Mr C owed at £2064.75. That list was supplied under cover of a letter of 6 February 2007. The sum did not include Mr C's current tenancy of Property 4 where he had by then undertaken to repay his arrears by regular instalments:

Year		Principal sum	Surcharge	Outstanding
1994/95	Property 1	£24.00	£2.40	£26.40
1995/96	Property 1	£13.93	£1.39	£15.32
1995/96	Property 2	£301.97	£36.90	£338.87
1998/99	Property 2	£579.57	£57.96	£637.53
1999/00	Property 2	£91.81	£9.18	£100.99
2001/02	Property 2	£276.55	£27.65	£304.20
2003/04	Property 2	£233.33	£23.33	£256.66
2004/05	Property 2	£105.46	£10.55	£116.01
2004/05	Property 3	£244.34	£24.43	£268.77

12. The list supplied by the Debt Recovery Agents on 6 February 2007, referred to £450 owed in parking fines and council tax arrears of £2756.06 in respect of another property which were not Mr C's debts.

13. On 24 February 2007, Mr C pursued with the Council the inappropriate references in the Debt Recovery Agents' lists to debts which were not his which he regarded as a breach of confidentiality. An explanation was given on 2 March 2007 that the person owing the amounts had given Mr C's current address (Property 4) for correspondence.

14. Mr C obtained a further statement on 27 April 2007 from the Debt Recovery Agents which also detailed the amount of council tax outstanding on Property 4 for 2005/06 (£157.27) and 2006/07 (£191.49). By that time, through two giro payments of £40 on 6 March 2007 and 4 April 2007, the 2004/05 debt in respect of Property 2 had been reduced to £36.01. The list of debts recorded the dates when a summary warrant had been obtained in respect of the 1998/99, 1999/00, 2001/02, 2003/04 and 2004/05 debts, namely,

26 January 2000, 31 July 2000, 24 August 2001, 3 October 2005 and 28 November 2005 (2004/05 Property 2) and 27 November 2006 (2004/05 Property 3).

15. After receiving this list, Mr C contacted the Council's Revenues and Benefits Division. A Revenues and Benefits officer responded on 11 May 2007 detailing Mr C's alleged debts as totalling £2773.11 made up as follows:

1994/95	Property 1	£26.40
1995/96	Property 1	£347.49
1995/96	Property 2	£161.36
1996/97	Property 2	£453.75
1997/98	Property 2	£479.89
1998/99	Property 2	£159.90
1999/00	Property 2	£110.76
2000/01	Property 2	£159.39
2001/02	Property 2	£155.40
2002/03	Property 2	£157.33
2003/04	Property 2	£256.66
2004/05	Property 2	£36.01
2004/05	Property 3	£268.77

16. In his letter, the Revenues and Benefits officer stated that the account for 2002/03 was not with the Debt Recovery Agents and was now due and payable to the Council. With regard to Mr C's statement that the council tax at Property 1 and Property 2 was the responsibility of the landlord and that Mr C made payments in respect of this to him, Mr C was asked to provide verifiable confirmation of this in respect of the respective landlords and liability for the periods in question would be assigned to them. Mr C was also asked to supply evidence which suggested that amounts outstanding were incorrect or had been paid. Until this was provided, the Council accepted the accounts as correct and had returned them to the Debt Recovery Agents for collection.

17. Mr C contacted the Council on 15 May 2007 and a Process Advisor replied on 17 May 2007. She discovered a discrepancy in the amount of CTB awarded for Property 3 and she reduced the charge outstanding for 2004/05 from £268.77 to £76.61. She explained that the high charges for 1996/97 and 1997/98 were because Mr C had failed to apply for CTB until 10 June 1998. The increase in charge between 2002/03 and 2003/04 was due to Income Support stopping on 28 July 2003. Mr C's income changed when he became

self-employed. The account for 2003/04 also had had a surcharge of £23.33 added after a summary warrant had been obtained.

18. In August 2007, Mr C made an arrangement with a section leader within the Revenues and Benefits Division to discuss the current council tax for Property 4 and followed this up with a further visit on 9 April 2008. After that meeting, the section leader wrote to Mr C stating that with regard to Property 1 he had noted that the award of benefit had been cancelled from the wrong date. He had corrected this by awarding Mr C additional CTB of £268.39 until the day that he had left the property on 18 February 1996 and he was now due to repay the reduced sum of £52.26 for Property 1 for 1995/96. With regard to Property 2, Mr C had been awarded CTB from 10 June 1998. Because he could not find any record of an earlier application, he could not award any further benefit. He stated that he had informed the Debt Recovery Agents of the amendment made to the account for 1995/96 for Property 1.

19. Mr C continued to pursue the matter with the Council in letters of 2 and 8 May 2008 and visited the Council's office on 26 June 2008. He, thereafter, complained to the Ombudsman.

20. I sought the Council's comments. They stated that since January 2007 the Revenues and Benefits Division had done their utmost to satisfy Mr C's enquiries but at their most recent meeting on 26 June 2008, Mr C refused to accept the detailed statements of account offered to him. Revenues and Benefits confirmed that Mr C would have received demands and other correspondence. They considered it regrettable the time that had passed to allow them to confirm to me the exact actions taken. Their Council Tax and Benefits Manager stated:

'Although [Mr C] is of the view his landlord was liable for council tax at both [Property 1 and Property 2] liability is determined by a 'hierarchy of liability' set out in section 6 of the Local Government Finance Act 1992. Where a property is tenanted and the owner is not resident, the tenant is liable for council tax.

Any excess of housing benefit in terms of local housing allowance would be paid to the tenant. If it was the case that [Mr C] paid this excess to his landlord for the purpose of paying council tax he would need to discuss this with this individual ... local housing allowance which can award more benefit than the actual rental charged, was introduced in February 2004.

Local housing allowance was not in place whilst [Mr C] resided in [Property 1] and only for a short period whilst he was resident in [Property 2] as he left that property in October of that year. Whilst payments had been made to the landlord in respect of housing benefit, [Mr C] requested his benefit be paid directly to him and this was changed in September 2004.

Given the lengthy passage of time, similar to the Council [the Debt Recovery Agents'] records are minimal for some of the earlier periods. [Mr C] has been given contradictory information regarding the debt we hold at [Property 2]. The [Debt Recovery Agents] hold a balance for the years 1996-1998 of £637.53, whilst [the Council] hold a balance with the [Debt Recovery Agents] of £1252.64. As some doubt exists surround(ing) this debt I am prepared to amend the outstanding liability to agree with the [Debt Recovery Agents]. This has reduced [Mr C]'s outstanding warranted debt for this period by £615.11'.

21. The Council Tax and Benefits Manager said that he had also written off a number of small balances of less than £10 to ensure that all debt was in line with that held by the Debt Recovery Agents. The balance of £157.33 in respect of 2002/03, due to an IT systems issue, had never moved through the recovery process or to the Debt Recovery Agents but the Council intended to collect this balance. He had written off a small balance of £9.23 in respect of Property 3 and confirmed there was now no outstanding council tax due at the address. He was satisfied that the balances due by Mr C at his various addresses were correct and agreed with the records of the Debt Recovery Agents.

22. Asked about how in general discrepancies could arise, the Council Tax and Benefits Manager stated that when the general petition for summary warrant was granted by the sheriff, specific instructions for each debtor would be issued to the sheriff officer. At that time, the amount owed should be the same. Subsequently, however, adjustments might be made to liability by the Council, retrospective CTB might be awarded, a discount might be applied, the customer might make direct payment to the Council, or overpayment in a current year might be attributed by the Council to an earlier year or years. In this particular case, there was no paperwork and a lack of information to explain discrepancies. As a rule and to provide assistance to Mr C, where no records were available, the Council had only sought the lower of two figures.

23. The Council provided me with an updated statement of Mr C's indebtedness prepared on 17 October 2008. This detailed the amount outstanding on Property 1 and Property 2 at £1377.52 as follows:

1994/95	Property 1	£26.40
1995/96	Property 1	£52.26
1995/96	Property 2	nil
1996/97	Property 2	nil
1997/98	Property 2	£479.89
1998/99	Property 2	£157.64
1999/00	Property 2	£100.99
2000/01	Property 2	£159.39
2001/02	Property 2	£144.81
2002/03	Property 2	£157.33
2003/04	Property 2	£98.81
2004/05	Property 2	nil
2004/05	Property 3	nil
2005/06	Property 4	nil
2006/07	Property 4	£60.97
2007/08	Property 4	£36.72
2008/09	Property 4	£3.61 cr

24. Following further correspondence from Mr C, the Council wrote to Mr C in January 2009 detailing the amount of council tax currently outstanding and the balances that have been written off. On 22 January 2009, the Council confirmed to me that the balances outstanding for Property 1 and Property 2 remained the same and the total outstanding for Property 4 had been reduced to £4.08.

(a) Conclusion

25. The basis of Mr C's complaint is not that he made payments which went unrecorded either direct or by the crediting of CTB. As I understand it, his contention is about liability. Unfortunately for him with the passage of time he has been unable to provide evidence to support his contention that his landlords were liable.

26. Clearly there were differences in the information held by the Debt Recovery Agents and the Council with regard to the various components of Mr C's indebtedness. In the spring of 2007, the difference between the Council and the Debt Recovery Agents was several hundreds of pounds. I believe that

the Council have been responsive when Mr C engaged with them. I consider also that the statement, summarised at paragraph 23, provided the comprehensive and accurate statement which Mr C sought. To that extent, I uphold the complaint but regard it as resolved.

(a) Recommendation

27. The Ombudsman has no recommendations to make.

(b) Conclusion

28. As stated, I consider that the Council have been responsive, and have actively reconsidered the amount allegedly owed by Mr C on three separate occasions. A sizeable historic debt in respect of Property 2 remains. The largest single component of that debt relates to the fiscal year 1997/98, the full fiscal year immediately preceding 10 June 1998 when CTB was awarded to Mr C. The Council's inability to assist further in regard to that debt derives from Mr C's failure to supply evidence to confirm that an earlier application for CTB was made or in support of Mr C's contention that he understood his landlord was responsible for, and would pay, council tax (paragraph 16).

29. I can understand why Mr C might have regarded the Council's adjustments as a sign that they were unsure of the amount of his indebtedness rather as an attempt by them to apply discretion where that was possible to his benefit. Mr C has benefited by pursuing the matter with the Council. They have been sympathetic rather than dismissive but, ultimately are not able to waive a debt for which they hold Mr C liable. On balance, I do not uphold this complaint.

(b) Recommendation

30. The Ombudsman has no recommendations to make.

Explanation of abbreviations used

Mr C	The complainant
Property 1	The privately rented flat Mr C occupied from 17 June 1994 to 18 February 1996
Property 2	The privately rented flat Mr C occupied from 19 February 1996 to 31 October 2004
Property 3	The privately rented flat Mr C occupied from 1 November 2004 to 1 February 2005
Property 4	Mr C's current home which he has occupied from 1 February 2005 to date
The Council	The City of Edinburgh Council
The Debt Recovery Agents	The private firm employed by the Council to recover arrears of council tax
The 2002 Act	The Scottish Public Services Ombudsman Act 2002
HB	Housing benefit
CTB	Council tax benefit