

## Scottish Parliament Region: West of Scotland

### Case 200502692: Inverclyde Council

#### Summary

#### **Category**

Local Government: Finance, Recovery of historic council tax and rent arrear debts.

#### **Overview**

The complainant accepted that he signed for the tenancy of a flat but said he did not take up occupancy. He was aggrieved six and a half years later when Inverclyde Council (the Council) informed him that there was outstanding council tax owed by him on the property and arrears of rent. The investigation did not uncover maladministration or service failure by the Council.

#### **Specific complaints and conclusions**

The complaints from Mr C that I investigated are that:

- (a) the Council failed properly to investigate Mr C's contention that he had terminated his acceptance of the tenancy before moving in (*not upheld*);
- (b) the Council wrongly pursued Mr C in late 2005 for outstanding council tax and rent arrears dating back to 1999/2000 (*not upheld*); and
- (c) the Council took action to arrest his bank account when he understood them to be still investigating matters (*not upheld*).

#### **Redress and recommendation**

The Ombudsman has no recommendation to make.

## **Main Investigation Report**

### **Introduction**

1. The Ombudsman's office received a complaint on 16 January 2006 from a man (Mr C) who was aggrieved that Inverclyde Council (the Council) had pursued him for council tax debts and rent arrears dating back to a period in 1999/2000.
  
2. The complaints from Mr C which I have investigated are that:
  - (a) the Council failed properly to investigate Mr C's contention that he had terminated his acceptance of the tenancy before moving in;
  - (b) the Council wrongly pursued Mr C in late 2005 for outstanding council tax and rent arrears dating back to 1999/2000; and
  - (c) the Council took action to arrest his bank account when he understood them to be still investigating matters.

### **Investigation**

3. The investigation was based on information supplied by Mr C and the Council's response to my enquiry. I have not included in this report every detail investigated, but I am satisfied that no matter of significance has been overlooked. Both Mr C and the Council have had the opportunity to comment on a draft of this report.
  
4. Section 32 of the Council's Tenancy Agreement details the circumstances in which the tenancy of one of their houses may be terminated. Sub section 32 (e) stipulates a requirement that the tenant give four weeks' notice in writing to the Council. Point 10 in the accompanying information notes states that, upon the termination of a tenancy, the keys should be handed into any main office of the Department of Housing and Customer Services not later than 4.30 pm on the Wednesday of the week of termination.
  
5. Mr C signed for the tenancy of a Council flat (the Flat) in a multi storey block in Greenock, on 24 February 1999. He also completed applications for housing benefit and council tax benefit on that date. Housing benefit and council tax benefit was subsequently awarded for the period up to 8 December 1999.

6. Mr C said he never occupied the Flat. He says he terminated it voluntarily shortly after signing for the tenancy by attending at a local Housing Office in Greenock. That office is now closed.

7. Officers who worked in the local Housing Office at the time, stated that the general practice was that persons wishing to terminate their tenancy were referred to the Council's main office in the town centre where the termination documents would be signed. The Council accepted, however, that some tenants were not willing to visit the main office and that keys were occasionally left at the local office. In such circumstances, staff at the local office would send a memorandum to the main office that keys had been handed in to the local office. There is no trace in the Council's records of a memorandum which would support Mr C's claim that he handed in his keys to the local office. There is also no record of any document from Mr C terminating the tenancy.

8. The Council said that when two letters dated 6 December 1999 addressed to Mr C at the Flat were returned to the Benefits Office marked 'addressee has gone away', the Council checked on whether he was living there. When they visited and found vandalism to the front door of the Flat they had cause to believe that it was unoccupied and commenced abandonment procedures. The tenancy was terminated with effect from 19 January 2000. From 9 December 1999 to that date, the complainant was liable for a full rent charge of £46.79 per week and the tenancy ended with a balance of £187.16 in rent outstanding.

9. With regard to council tax, while the complainant was on full council tax benefit, this did not include water and sewage charges and a sum of council tax was outstanding for the period up to 8 December 1999. The Council had no forwarding address and debts for 1998/99 of £9.43 and £174.06 for 1999/2000 went unpaid. On 3 October 2001 they issued a reminder to Mr C at the Flat (his last known address). On 14 February 2002, the Council petitioned the Sheriff for a summary warrant in respect of the 1999/2000 debt. This was granted on 25 February 2002 and resulted in the addition of a 10% penalty. A warrant notice was issued to Mr C at the Flat on 17 May 2002.

10. The Council said they considered it was still appropriate to issue mail to Mr C at the Flat since the Council had no forwarding address and it was possible that

Mr C had arranged with Royal Mail to redirect his mail. As it turned out, no such arrangements had been made and there were no procedures in place at that time for dealing with returned mail. After the warrant notice was issued, the debt was passed to the Council's recovery agents (the Agents) to attempt to recover the outstanding sum but this met with no success since Mr C's whereabouts were not known.

11. Some time prior to mid October 2005, the complainant received a parking ticket but not from the Council. The matter was passed by the issuing authority to the Agents whose check established that Mr C had a council tax debt on the Flat. The Agents made contact on 14 October 2005 with Mr C at his mother's address, the address given in vehicle registration documents.

12. The complainant contacted the Council by telephone. After speaking with a junior member of staff, he then spoke with her senior (Officer 1). He alleged that when he asked whether he could record the call, Officer 1 hung up on him without him being able to explain his problem. Officer 1 has stated that a warning was given to Mr C before the call was terminated. Mr C then spoke with another officer in Housing Services (Officer 2) who said he would investigate and reply. In the absence of a reply, Mr C telephoned again on 20 October 2005 and spoke to another officer in Housing Services (Officer 3) whom, he said, was rude and hung up on him on two occasions. Officer 3's recollection is that Mr C himself terminated the first call and that Officer 3 gave Mr C warning before terminating her second conversation with him.

13. On 21 October 2005 the complainant e-mailed the Council's Revenues Manager (Officer 4) at the Council, stating that he was amazed to find he had a council tax liability.

14. Officer 4 responded later that day explaining why he considered Mr C was liable. He stated that, if Mr C was disputing the period of liability, then Officer 4 would need to know where Mr C was living from the date he allegedly gave up the tenancy to the present time. He asked Mr C to provide all addresses and start and end dates with substantiating evidence. Officer 4 confirmed that council tax benefit was payable directly to the Council as landlord and was simply an internal

transaction. While Officer 4 undertook to deal with the council tax issues, the rent issue would require to be referred to Housing Services.

15. Mr C responded on 24 October 2005. He stated that there was no way he could provide the exact dates for the liability period but he could contact the Benefits Agency to establish the addresses where his benefits had been sent.

16. Officer 4 replied on 25 October 2005 stating that where someone disputed the residency period at an address it was a requirement that they provide alternative addresses for the period in dispute. While Officer 4 accepted that Mr C might not be in a position to provide exact dates, to resolve matters, Officer 4 still needed some indication of time periods and evidence to satisfy audit requirements.

17. Mr C responded immediately by e-mail. He stated that he had never owned or rented property and that might explain why his name did not appear on the council tax system. All he could add to help was to say that he had been residing between his mother's, father's and partner's properties but using his mother's property as a postal address. Mr C sought an early reply.

18. On 27 October 2005, Officer 4 replied by e-mail stating the fact that Mr C applied for and was awarded housing benefit and council tax benefit was inconsistent with his statement that he had never owned or rented any property. Housing Services had confirmed to Officer 4 that Mr C had been tenant of the Flat for the period 25 February 1999 to 19 January 2000. He was, therefore, liable for council tax and should pay the outstanding sum. With regard to assisting with establishing addresses, Officer 4 suggested that Mr C look out documents where a permanent address was essential, such as loan or hire purchase agreements, vehicle insurance policies, TV licence etc. Officer 4 also sought information on where Mr C considered his current address to be.

19. Mr C did not answer immediately. Officer 4 wrote again to Mr C on 15 November 2005 saying that since he had heard nothing further, he would reactivate the account and seek payment.

20. Mr C replied that day by e-mail to say he had been off work. He confirmed that he had never moved into the Flat and had handed the keys back within two

weeks. He confirmed his current address was 'no fixed abode'. He indicated that he intended to contact the Ombudsman. This e-mail was forwarded to the Head of Housing Services that afternoon (15 November 2005).

21. On 22 November 2005, Officer 4 left a message on Mr C's voicemail saying he had been unable to speak with the Head of Housing (Officer 5) but had instructed the Council's Agents to hold any recovery action until he returned to his office on 28 November 2005. In Officer 4's absence, Mr C spoke with his female colleague and forwarded relevant e-mails to her on 23 November 2005.

22. On 28 November 2005 Officer 4 informed Mr C that he could not hold follow-up action indefinitely since Mr C had not provided evidence that he should not be held liable for the council tax debt.

23. On 7 December 2005, Mr C tried to speak on the telephone with a Housing Services Area Manager (Officer 6). Officer 6 responded by e-mail on 8 December 2005 stating that he had not yet concluded his investigation. Mr C responded immediately to say that he was meeting with his solicitors the following Monday. He queried why, if the matter was still being investigated, Officer 4 had instructed the Council's Agents to recover the money in dispute.

24. On 12 January 2006, Officer 6 informed Mr C that he had found no evidence to substantiate Mr C's claim that he handed in the keys and voluntarily terminated his tenancy (in early 1999). His e-mail confirmed that, in addition to any council tax debt, a sum of £187.16 was outstanding on the rent account for the Flat.

25. Mr C replied stating that he had handed the keys in to the local office but there had been a lack of communication by them with the main office. He ventured that a statement by the Council that six letters posted had been posted but not returned was possibly because steel doors were affixed to the property and no post could, therefore, be delivered. He found the Council's information to be very vague given that they had been investigating the matter for six weeks. The Council have commented that the steel door was not fitted until December 1999.

26. In the meantime, the Council's Agents had taken arrestment action on 4 January 2006. Mr C complained to Officer 6 about this and submitted his

complaint and related correspondence to the Ombudsman on 16 January 2006. He sent a further e-mail on 20 January 2006 which was copied to the Council's Customer Services Manager (Officer 7) and to Officer 6.

27. Officer 7 responded to Mr C on 2 February 2006. He confirmed that an arrestment imposed by the Agents related to Mr C's bank account; gave Mr C details of the summary warrant procedure and sent relevant extracts of the petition and signed warrant to Mr C. Officer 7 requested that Mr C's future correspondence with the Council be solely through him.

28. Mr C responded to this e-mail on 3 and 9 February 2006. He pointed to inconsistencies in what he had been told about the arrestment and about the handing in of keys to the Council's local office. In his reply of 21 February 2006, Officer 7 sought to clarify what Officer 6 had said. Officer 6 had never stated that tenants frequently handed in keys to the local office or that they often refused to go to the main housing office when asked to do so. He had not stated that the handing in of keys to the local office was a regular occurrence.

*(a) Conclusion*

29. The Council have an extant record of Mr C signing for the tenancy of the Flat on 24 February 1999. Neither the Council nor Mr C have any record of any written termination nor is there a record that the keys were handed in to the local office or elsewhere. Mr C has not provided evidence to the Council that he was staying somewhere else during the relevant period 25 February 1999 to 19 January 2000. The Council have investigated but that investigation has been hampered by the lack of evidence corroborating Mr C's account of events. I do not uphold this complaint.

*(b) Conclusion*

30. Given the evidence presented above, I am unable to conclude that the Council wrongly pursued Mr C for outstanding council tax. I do not uphold this complaint.

*(c) Conclusion*

31. I consider that following a lack of immediate response to Officer 4's email of 22 November 2005 (paragraph 22), it was appropriate for the Council to instruct their Agents to recover the Council tax debt. I do not uphold this complaint.

*(a) to (c) Recommendations*

32. The Ombudsman has no recommendation to make.

31 October 2006



**Explanation of abbreviations used**

Mr C	The complainant
The Council	Inverclyde Council
The Flat	The flat for which Mr C signed a tenancy agreement
The Agents	The Council's recovery agents
Officer 1	The senior member of staff to whom Mr C spoke on the telephone
Officer 2	The second person Mr C spoke to in Housing Services
Officer 3	The third person Mr C spoke to in Housing Services
Officer 4	The Council's Revenues Manager
Officer 5	Head of Housing Services
Officer 6	Housing Services Area Manager
Officer 7	The Council's Head of Performance Management and Policy Development