

## Scottish Parliament Region: Highlands and Islands

### Case 200502225: The Highland Council

#### Summary of Investigation

##### **Category**

Local government: Council Tax

##### **Overview**

A Citizens' Advice Bureau Officer (the complainant for the purposes of our complaint, to be known here as Ms C) raised a number of concerns about The Highland Council (the Council)'s handling of her clients (Mr and Mrs D's) Council Tax account and their subsequent formal complaint to the Council.

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

The complaints which have been investigated are that:

- (a) the Council failed to notify Mr and Mrs D of outstanding Council Tax in a timely manner (*not upheld*);
- (b) contradictory information was provided by the Council regarding Mr and Mrs D's Council Tax account (*not upheld*);
- (c) inadequate checks were undertaken by the Council prior to taking formal action (*not upheld*);
- (d) an inadequate explanation was provided by Council staff for the error which occurred in relation to the handling of Mr and Mrs D's Council Tax account (*not upheld*); and
- (e) the investigation carried out by the Council into Mr and Mrs D's complaint was inadequate (*not upheld*).

##### **Redress and recommendation**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 11 November 2005 the Ombudsman received a complaint from a Citizens' Advice Bureau Officer (referred to in this report as Ms C) on behalf of her clients, Mr and Mrs D. The complaint concerned The Highland Council (the Council's) handling of Mr and Mrs D's Council Tax accounts for the financial years 1995/96 and 1996/97. Ms C complained that, having previously been notified by the Council that their accounts for these years were clear, Mr and Mrs D were, therefore, aggrieved to be notified in 2005 (some eight years later) that their accounts were, in fact, in arrears.

2. I established that Mr and Mrs D's complaint had not exhausted the Council's own complaints procedure and I advised Ms C of the requirement to do so. Ms C subsequently complained to the Council's Chief Executive on Mr and Mrs D's behalf. Mr and Mrs D were dissatisfied with the reply and returned to the Ombudsman's office.

3. I have investigated Ms C's complaints that:

- (a) the Council failed to notify Mr and Mrs D of outstanding Council Tax in a timely manner;
- (b) contradictory information was provided by the Council regarding Mr and Mrs D's Council Tax account;
- (c) inadequate checks were undertaken by the Council prior to taking formal action;
- (d) an inadequate explanation was provided by Council staff for the error which occurred in relation to the handling of Mr and Mrs D's Council Tax account; and
- (e) the investigation carried out by the Council into Mr and Mrs D's complaint was inadequate.

### **Investigation**

4. My investigation involved examining all documents and correspondence provided by Ms C, and written and telephone enquiries were made of the Council.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Ms C and the Council were given an opportunity to comment on a draft of this report.

**(a) The Council failed to notify Mr and Mrs D of outstanding Council Tax in a timely manner**

6. Evidence I have examined shows that, prior to my office beginning this investigation, the Council had already accepted that, due to an error, a change of address notification submitted by Mr and Mrs D in 1997 had not been processed promptly and, as a result, the Council Tax section of the Council had not been notified, until 2005, of Mr and Mrs D's new address. At that point, the Council Tax section had written to Mr and Mrs D to pursue the outstanding Council Tax amount.

7. Prior to my involvement, the Council's Chief Executive had apologised to Mr and Mrs D and instructed that the Summary Warrants issued in respect of their outstanding Council Tax be cancelled. The 10% statutory penalty added to the financial year 1996/97 was also cancelled.

8. In addition during my investigation of the complaint, I was advised by the Council that, following a further review of the case, they had established that they were no longer able to pursue Mr and Mrs D for the outstanding Council Tax. The Council explained that, in terms of the Prescription and Limitation (Scotland) Act 1973, because they had not actively pursued the outstanding Council Tax and Mr and Mrs D had not acknowledged the debt within a continuous five year period they were prevented from pursuing the debt. In the circumstances the outstanding balances had been written off.

9. In view of the action already taken by the Council, and the admission of error, my investigation focussed on whether Mr and Mrs D had outstanding Council Tax at all, and how the error had occurred, in order to prevent a similar situation occurring in the future.

10. In response to my enquiries about how the error had occurred, the Council provided me with evidence, in the form of a computer record print-out, that normal recovery action had been taken by the Council at the appropriate time to follow-up Mr and Mrs D's unpaid Council Tax for 1995/96, prior to them moving house on 1 May 1997.

11. In relation to unpaid monies from Mr and Mrs D's 1996/97 account, evidence I have seen confirms that although in April 1997 Mr and Mrs D agreed to make instalments towards their outstanding accounts for both 1995/96 and

1996/97, and that payments of £10 were made on 18 June, 2 July and 24 September 1997, Mr and Mrs D failed to maintain this payment agreement. As a result, and in line with normal Council policy, the Council proceeded to take formal action for recovery of the outstanding amount.

*(a) Conclusion*

12. I am satisfied that the evidence shows Mr and Mrs D did have arrears of Council Tax on both their accounts for 1995/96 and 1996/97 which the Council had a duty to pursue.

13. I am also satisfied that the Council correctly followed their normal recovery action in relation to Mr and Mrs D's Council Tax account for 1995/96 and 1996/97 prior to 1 May 1997, when Mr and Mrs D moved to their new home. It is clear that Mr and Mrs D correctly notified the Council of their new address. The Council had already accepted that, due to an error, the change of address was not forwarded to the appropriate section which impacted on the communication of that debt. Had the Council not acknowledged the error and apologised for it before the complaint was made to the Ombudsman, I would have upheld this complaint. However, it is not the practice of the Ombudsman's office to uphold complaints where it is clear that the authority, in this case the Council, has already taken appropriate steps to acknowledge fault and remedy it. The Council have also advised me that all relevant Finance staff will be reminded about the provisions of the Prescription and Limitation (Scotland) Act 1973 and the need to check if they apply to any account which they are dealing with when administering Council Tax. In all the circumstances, I do not uphold the complaint.

*(a) Recommendation*

14. I am satisfied that the Council have already apologised to Mr and Mrs D for the delay in identifying and processing their new address. The Council had already taken steps to cancel the relevant Summary Warrants before my involvement and have also modified and unified the IT systems and other processes for administering Council Tax and benefits in an effort to prevent a recurrence of the problem. I am satisfied that these actions adequately remedy any injustice Mr and Mrs D suffered and I have no further recommendations to make.

**(b) Contradictory information was provided by the Council regarding Mr and Mrs D's Council Tax Account**

15. Mrs D maintained that, during a visit to the Council offices in 1997, she was advised by a Council officer that her Council Tax account was clear.

16. Council Officers have no recollection of Mrs D's visit to her local office, nor is there any record of the visit in the Council's system. Even if Mrs D had visited the Council's offices, and been advised her account was clear, evidence exists to show that the Council Tax account was not clear – bills and reminders were correctly issued to Mr and Mrs D prior to their move to their new address in May 1997 and Mr and Mrs D have not provided me with any evidence that instalments were paid by them for these years. In addition, if the Council Tax accounts had been clear, I fail to understand why Mr and Mrs D would have agreed to enter into a payment arrangement to clear their account in instalments.

*(b) Conclusion*

17. I do not uphold this complaint. I have seen no evidence that the arrears on Mr and Mrs D's Council Tax accounts had been cleared. On the other hand, records show that the payment agreement entered into by Mr and Mrs D was not maintained.

*(b) Recommendation*

18. The Ombudsman has no recommendation to make.

**(c) Inadequate checks were undertaken by the Council prior to taking formal action**

19. The Council have explained that, with responsibility for in excess of 106,000 council tax payers, it is not practical from them to check the address of every account before taking court action to recover outstanding debt. However, under a contractual arrangement, the Post Office returns all undelivered mail to the Council. When such mail is returned as 'gone away' the Council will suspend the account to stop recovery action until staff are able to check up on forwarding addresses. In this case, the first correspondence to be returned by the Post Office was the Final Notice issued to Mr and Mrs D on 10 October 1999 in relation to their Council Tax account for 1996/97. In line with the normal procedure, a suspend was put on the account until 2005 when staff were able to check their address.

20. In relation to Mr and Mrs D's Council Tax account for 1995/96, the Council have confirmed that none of the correspondence in connection with this financial year was returned by the Post Office. Court Action was taken because normal recovery action had been taken prior to Mr and Mrs D moving to their new address. A Final Notice had been issued on 12 February 1997 but a hold was placed on the account in view of a payment arrangement being agreed. As this was not maintained, the hold was removed, and the Council proceeded to the next stage in the recovery procedure which was the issue of a Summary Warrant. This was issued on 27 October 1999. It was subsequently withdrawn in 2006 following a review of the account.

*(c) Conclusion*

21. Correspondence in relation to Mr and Mrs D's Council Tax account for 1995/96 was not returned by the Post Office and I am satisfied that the Summary Warrant was issued following the agreed recovery procedures. However, the Summary Warrant was sent to their old address. In relation to their 1996/97 account, although I accept that the Summary Warrant for that year was correctly issued to their current address, the amended bill and reminder had been issued to their old address. I also note that, given the volume of tax payers, the Council are unable to check all the addresses, however, in this case, Mr and Mrs D had correctly notified the Council of their new address. Had the Council not already recognised their error, apologised for it and cancelled the Summary Warrants, I would have upheld this aspect of the complaint. However, in view of all the actions already taken by the Council before the complaint was made to the Ombudsman, I do not uphold this complaint. In reaching my decision I have taken into account the fact that the outstanding balances have been written off.

*(c) Recommendation*

22. I am satisfied that the Council have already cancelled the Summary Warrants issued to Mr and Mrs D and have apologised to them. In addition, as I mentioned above, I am satisfied that the Council have already taken action to integrate their internal IT systems to ensure that, as far as possible, a similar situation does not arise in the future. In the circumstances, the Ombudsman has no recommendations to make.

**(d) An inadequate explanation was provided by Council staff for the error which occurred in relation to the handling of Mr and Mrs D's Council Tax account; and (e) The investigation carried out by the Council into Mr and Mrs D's complaint was inadequate**

23. Evidence on file shows that Ms C had what I consider were full, honest responses from Council officers, including the Chief Executive, acknowledging the error and apologising, and I will not set out the responses in detail here because it is not necessary to do so.

*(d) and (e) Conclusion*

24. As a result, I do not uphold Ms C's complaints that the Council's explanations and investigation were inadequate.

*(d) and (e) Recommendation*

25. The Ombudsman has no recommendations to make.

23 May 2007

**Explanation of abbreviations used**

Ms C	Citizens' Advice Bureau Officer
Mr and Mrs D	Ms C's clients
The Council	The Highland Council