

Case 200702527: Midlothian Council

Summary of Investigation

Category

Local government: Policy and administration; Community Charge¹ debt recovery

Overview

The complainants (Mr and Mrs C) complained about the manner in which Community Charge was recovered by Midlothian Council (the Council). They disputed an outstanding amount the Council indicated as having been owed by Mrs C, and they did not believe the Council had a right to recover the debt through an internal data matching scheme² without, in their view, letting them have prior notice of the debt before deferring to this measure.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to take steps to recover the debt until it was highlighted in an employee initiative scheme (*not upheld*);
- (b) the Council was unable to provide contemporaneous evidence of the outstanding debt (*not upheld*);
- (c) the Council pursued the debt in an unreasonable manner (*not upheld*); and
- (d) the Council's arrestment procedure commenced before the complaints procedure was fully exhausted (*not upheld*).

Redress and recommendation

The Ombudsman recommends the Council notifies complainants that action in relation to the arrestment of wages for the recovery of debt may continue during the handling of the complaint; to avoid the risk of misunderstandings in future cases.

¹ Community Charge, also known as the Poll Tax was introduced in 1989 to replace domestic rates. It was further succeeded on 1 April 1993 by the Council Tax.

² An internal data matching scheme as part of a summary warrant is an accepted way of using collated data between services to identify employees with outstanding Council Tax arrears.

The Council have accepted the recommendation and will act on it accordingly.

Main Investigation Report

Introduction

1. Mr and Mrs C complained to the Scottish Public Services Ombudsman on 8 January 2008 that Midlothian Council (the Council) failed to provide an adequate service to them during the Council's attempt to recover debt which had been accrued by Mrs C between 1989 and 1993. They complained to the Council on 21 October 2007 and were unhappy with the response they received on 25 October 2007 and with the subsequent correspondence between them and the Council to resolve matters. Mr and Mrs C have not moved house since the time the debt was accrued and in their view, the Council could have contacted them earlier in the process of debt recovery.

2. The complaints from Mr and Mrs C which I have investigated are that:
- (a) the Council failed to take steps to recover the debt until it was highlighted in an employee initiative scheme;
 - (b) the Council were unable to provide contemporaneous evidence of the outstanding debt;
 - (c) the Council pursued the debt in an unreasonable manner; and
 - (d) the Council's arrestment procedure commenced before the complaints procedure was fully exhausted.

Investigation

3. In 1998 Mr C had negotiated a settlement with protection in a Trust Deed (a legally binding debt solution available to residents of Scotland between debtors and creditors) which resolved his outstanding debt to the Council.

4. On 16 February 2007 Mrs C was informed by the Council of recovery of an outstanding debt against her for the non-payment of the full amount of Community Charge between 1989 and 1993.

5. Mr C wrote to the Council on 21 October 2007, stating:
- '... having found ourselves in financial difficulties in the 1990's [sic] we took legal advice and completed a protected trust deed as [sic] way of drawing a line under this. Had the Council [or indeed the Sheriff Officers] made us aware that these particular accounts in my wife's name were still outstanding we would have signed a Trust Deed in joint names and the accounts from 1989 and 199[2] would have been included in this Trust Deed. We were advised that unless there were known debts in my wife's

name we could not lodge a joint Trust Deed. I therefore contend that had the Council correctly identified these accounts as outstanding at the time we would have completed a Joint Trust Deed and therefore we would not be having dialogue about them so many years later.'

6. In a letter dated 25 October 2007 from the Council, Mr and Mrs C were advised the contemporaneous records had not been retained by the Council and in line with their procedures for the retention of data they did not hold records older than seven years. The Council explained, however, that a summary of the debt was retained in the file and they were exercising the right to recover outstanding debt under appropriate legislation.

7. Further to the Council's explanation regarding the perceived omission in the Trust Deed, Mrs C wrote to the Council on 16 December 2007 and indicated that had she received earlier notice of her personal debt, she would have been able to produce evidence of payment to demonstrate, in her view, that she had made full payments, but as too much time had lapsed, this was no longer possible.

8. As part of this investigation, I have examined the complainant's correspondence, and relevant documentation from the Council to identify the policies and procedures followed to pursue outstanding debts with employees in line with the initiative ran by Mrs C's employer. I have also seen evidence of the information that employers, who participate in the employee initiative scheme to identify debtors, provide to their employees to let them know such debts will be pursued after being identified as a result of a data matching exercise; and that their employer is part of a data matching exercise.

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

(a) The Council failed to take steps to recover the debt until it was highlighted in an employee initiative scheme

10. Mrs C was informed by the Council of her outstanding debt for the non-payment of the full amount of Community Charge between 1989 and 1993. In a letter dated 21 February 2007, the Council let Mrs C know this particular debt did not have a statutory time bar.

11. Mrs C complained that the Council had not been able to demonstrate their attempt to recover the debt by sending the correspondence (they have indicated would have been generated) to her home address. In a letter dated 26 March 2007 Mrs C wrote to the Council to say that she had lived in the house since 1989 and felt this could have been handled in a letter. She asked for documentary evidence to show the Council had been trying to pursue the debt with her. In a letter dated 2 December 2007 Mrs C agreed she would have received some correspondence but that does not cover the period referred to. Mrs C advised the Council that she considered it unreasonable that they could not demonstrate the attempts made to contact her.

12. In response to my investigation, on 7 July 2008 the Council indicated that a number of notices were issued to Mrs C during the period of the Council's attempt to recover the debt at the time and they were not answered by Mrs C. They do not have copies of the letters and summary warrants that were sent out, but they have a record of the outstanding debt in Mrs C's name for that period.

13. The Council explained contemporaneous evidence was no longer available because they did not retain correspondence for more than six years, but a record of debt had been retained.

14. The Council told Mrs C and me that they continued to take steps to recover residual Community Charge and used all means available to them. At the same time, they referred to limited resources leading to the time delay in pursuing this outstanding charge accrued by Mrs C.

(a) Conclusion

15. The Council were legally entitled to pursue the outstanding Community Charge debt. I have no evidence to suggest the Council had alerted Mr and Mrs C to the outstanding debt accrued by Mrs C between 1993 and 2007. However, I understand there would have been usual correspondence regarding the debt between 1989 and 1993. It was Mrs C's responsibility to ensure these matters had been settled.

16. The Council have also stated their general position on recovering Community Charge debts since its abolition in 1993. This explanation is not unreasonable.

17. While there are no existing records of any attempts by the Council to contact Mrs C about her Community Charge debt, their explanations for this are not unreasonable. I do not uphold the complaint.

(a) Recommendations

18. The Ombudsman has no recommendations to make.

(b) The Council were unable to provide contemporaneous evidence of the outstanding debt

19. The Council explained to Mr and Mrs C that a summary of the debt was retained in the file and they were exercising the right to recover outstanding debt under appropriate legislation. The Council, in their letter dated 11 April 2007, provided a detailed breakdown of the outstanding charges against Mrs C.

(b) Conclusion

20. While the full original records may not exist, the Council has retained a detailed summary of Mrs C's Community Charge debt. This situation is not dissimilar to that in other Councils where the Ombudsman has looked into the recovery of old tax debts. I have seen no reason to doubt the accuracy of the Council's records. In all the circumstances I do not uphold the complaint.

(b) Recommendations

21. The Ombudsman has no recommendations to make.

(c) The Council pursued the debt in an unreasonable manner

22. Mrs C's debt was identified through a data matching scheme which her employer had in place. Because of this the Council were able to cross reference a number of data sets to locate outstanding debts and seek methods of recovery. This scheme was brought to Mrs C's attention in a leaflet that was issued with her wage slip from her employer.

23. The Council have said that the data matching exercise was approved by their legal team and was in accordance with the Data Protection Act. I have also seen the 'Code of Data Matching Practice' produced by Audit Scotland. I have seen no evidence that the Council breached this Code.

24. The Council told Mrs C of her debt in their letter dated 16 February 2007. This said:

'If no contact has been made within 14 days of the date of this letter, further action will be taken to recover the outstanding amount.'

It also told her that if no contact was made the matter would be referred to the Sheriff Officer for enforcement.

25. Mrs C replied to the Council in a letter of 19 February 2007, contesting her liability for the debt. Mr and Mrs C continued to correspond with the Council about this through 2007. However, Mr and Mrs C continued to contest the debt and, as it was not paid, the Council eventually referred the matter to the Sheriff Officer.

26. The Council told Mr C in a letter dated 25 October 2007:

'You had paid your Community Charge in full, but as the Community Charge was a personal tax your wife's debt could not be included in the claim. It was your decision not to include your wife in the Trust Deed and the Council was not obliged to inform you of her outstanding Community Charge at the time.'

27. I have seen some correspondence about the Trust Deed. This is clearly headed with Mr C's name. Mrs C is not referred to.

28. There is some evidence that Mr and Mrs C believed that the Trust Deed should have covered the debts of them both (see paragraph 5 and paragraph 7). They have also said that if they had known about Mrs C's debt they would have ensured that this happened, although in a letter to the Council of 2 December 2007 Mrs C does not dispute that she would have received letters about her debt between 1989 and 1993.

(c) Conclusion

29. The Council have a statutory duty to recover any outstanding Community Charge. The use of data matching exercises is an acceptable tool to identify outstanding debts, as is indicated by the Audit Scotland 'Code of Data Matching Practice'.

30. The letter of 16 February 2007 did not demand payment within 14 days, but rather asked Mrs C to contact the Council in 14 days. This appears reasonable to me.

31. The Council have also explained why the Trust Deed did not cover Mrs C's debt.

32. Under the circumstances I have not seen grounds to suggest the Council pursued the debt in an unreasonable manner. I, therefore, do not uphold this aspect of Mr and Mrs C's complaint.

(c) Recommendations

33. The Ombudsman has no recommendations to make.

(d) The Council's arrestment procedure commenced before the complaints procedure was fully exhausted

34. Mr and Mrs C complained the Council had begun the arrestment procedures to recover the debt before the complaints procedure had been exhausted. Mr and Mrs C complained on 21 October 2007 and the Council continued to proceed with recovery procedures. On 21 October 2007 Mrs C also wrote to the Sheriff Officers letting them know they had raised the matter as a formal complaint with the Council. Additionally, Mrs C wrote to the Council to let them know this matter should rest until the 'grievance' had been resolved.

35. In their letter dated 22 April 2008, the Council indicated that although there is no policy statement confirming that recovery should proceed whilst a matter is subject to the complaints procedure, similarly, there is no procedure prohibiting this. Therefore, the inference is, per the legislation, that the debt remains due and payable unless and until an appeal outcome results in a change in liability. I have seen correspondence which lets Mrs C know the matter should be settled even though the process of the complaint continued.

(d) Conclusion

36. Whilst it is clear the procedures did run together, there is no mechanism to prohibit this and the two Council procedures can run concurrently. In general, complaints procedures should not prevent councils carrying out their usual business and procedures. I do not uphold the complaint.

(d) Recommendation

37. The Ombudsman recommends the Council notifies complainants that action in relation to the arrestment of wages for the recovery of debt may continue during the handling of the complaint; to avoid the risk of misunderstandings in future cases.

38. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify him when the recommendation has been implemented.

Explanation of abbreviations used

Mr and Mrs C

The complainants

The Council

Midlothian Council

List of legislation and policies considered

Act of Sederunt (Proceedings in the Sheriff Court under the Debtors (Scotland) Act 1987) 1988

Prescriptions and Limitation (Scotland) Act 1973