

9 January 2019

**Complaint reference:**

18 008 848

**Complaint against:**

London Borough of Havering

## **The Ombudsman's final decision**

Summary: Miss D complained the Council delayed billing her for council tax, failed to evidence that she owes the amount claimed, gave her inaccurate information and unreasonably sent bailiffs to her property without writing to her first. There is no fault in how the Council billed Miss D. The Council accepts it should have written to Miss D before referring the arrears to the bailiffs after a nine year gap. The Council has agreed to remove the bailiff fees. That, plus an apology and deduction of £100 from Miss D's council tax arrears is satisfactory remedy for Miss D's distress at having to deal with bailiffs after no contact from the Council for nine years.

---

## **The complaint**

1. The complainant, whom I shall refer to as Miss D, complained about the way the Council dealt with her council tax account. Miss D complained the Council:
  - delayed billing her for council tax when it could easily have traced her address;
  - failed to provide evidence for the amount it says she owes;
  - inaccurately recorded a payment made in 2011;
  - unreasonably sent bailiffs to her property without writing to her first in 2018 to tell her about the arrears; and
  - recorded a bailiff visited her on 16 April 2018 when no visit took place.

## **The Ombudsman's role and powers**

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. The Ombudsman cannot question whether a Council's decision is right or wrong simply because the complainant disagrees with it. He must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended and section 34(3)*)

- 
3. If we are satisfied with a Council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(j), as amended*)

## **How I considered this complaint**

4. As part of the investigation, I have:
  - considered the complaint and Miss D's comments;
  - made enquiries of the Council and considered the comments and documents the Council provided;
  - considered Miss D's comments on my draft decision, along with the documentary evidence and video evidence she provided; and
  - gave the Council an opportunity to comment on my draft decision.

## **What I found**

### **Background**

5. On 10 March 2008 the Council issued a council tax bill for the tax year 2008/9. When Miss D did not make payment the Council issued a reminder on 21 April, a final notice on 12 May and a summons on 22 May. On 3 July the Council secured a liability order from the Magistrates Court. The Council wrote to Miss D on 7 July to give her a final opportunity to pay before bailiff action. The Council did not receive any payment and referred the debt to bailiffs. Bailiffs were unable to collect the debt. I understand Miss D left the property in around January 2009.
6. In 2016 the Council set up a task force to address old council tax arrears. In 2017 the Council identified an address for Miss D. The Council says its usual practice at that point is to write to the person at the identified address to give them an opportunity to pay. In this case the Council did not write to Miss D and instead referred the case to bailiffs. Bailiffs began contacting Miss D in March 2018. That has added additional costs to Miss D's account. The bailiff's record shows a bailiff visited Miss D's property on 16 April 2018 at 8am. Miss D provided the Ombudsman with CCTV evidence which does not show any bailiff visit at that time on that date.
7. Miss D complained to the Council on 23 April. The Council responded on 21 May and explained what had led to the arrears. The Council referred to a payment received in 2011. The Council told Miss D it had no record of her telling it in 2009 she had left the property and that it was her responsibility to tell the Council. The Council said as it only had details of a new tenant at the property from 1 April 2009 it had billed her for the period up to that date. The Council explained what had led it to contact Miss D. The Council told Miss D if she could prove she had made payments not credited to her account the Council would consider her evidence. The Council offered to remove the internal bailiff fee of £42.50.
8. Miss D complained to the Council about its response on 23 May 2018. The Council responded on 4 June and apologised for the confusion about reference to a payment in 2011. The Council invited Miss D to provide receipts for any payments made that did not appear on the statement of account. The Council told Miss D it had asked the bailiffs to respond to her about her claim nobody visited on 16 April 2018.

- 
9. The Council accepts its usual practice is to send a new 14 day letter when it traces a customer with arrears. The Council admits that did not take place in this case and has agreed to remove the compliance fee and enforcement fee totalling £310. The Council will then give Miss D an opportunity to set up a repayment plan for the council tax arrears.

### **Analysis**

10. Miss D says the Council unreasonably delayed billing her for council tax for the period 2008/9 when she was easily traceable. I understand Miss D's concern about being contacted many years after the arrears accrued. However, there is no restriction in law on the Council recovering unpaid council tax many years after the event. Council tax is public money and the Council has a responsibility to collect it. So, failing to contact Miss D about the arrears between 2009 and 2018 is not fault. It is clear from the Council's response until 2016, when it set up a tax force to recover unpaid council tax, the Council concentrated on larger debts because it did not have the staffing resources to pursue every council tax debt. That explains the nine year gap in contact. It is not the Ombudsman's role to comment on how Council allocates its resources. As there is no time restriction on the Council recovering a council tax debt I cannot criticise it for pursuing Miss D many years after the debt occurred.
11. When there has been a lengthy gap in contact though the Ombudsman would expect a Council to write to a debtor when an address is identified to give the debtor a further opportunity to pay before referring the case to the bailiffs. The Council says it considers it best practice to do that. The Council concedes it failed to do that in this case and instead passed the debt directly to the bailiffs. The Council has apologised for not writing to Miss D before referring the debt to the bailiffs. The Council has also agreed to take back the liability order from the bailiffs and give Miss D an opportunity to repay the debt. I welcome that offer. It is clear though that having to deal with bailiffs caused Miss D distress, particularly given the passage of time. The Council has agreed to my recommendation that, in addition to removing the bailiff fees, it also pay Miss D £100 to reflect her distress at being contacted by bailiffs. I am happy for the Council to deduct that £100 from the council tax Miss D owes.
12. In reaching that view I am aware Miss D believes she does not have any outstanding arrears for 2008/9. I am satisfied though the Council has provided evidence to show it issued a reminder, final notice and summons for the 2008/9 council tax account before the Council secured a liability order in July 2008. As I understand Miss D did not move out of the property in question until February 2009 I am satisfied Miss D should have known of the outstanding arrears. Unless Miss D can provide evidence to the Council she paid the 2008/9 council tax due I cannot criticise the Council for seeking to recover it.
13. Miss D also says she left the property in question before the end of the council tax year and is therefore not liable for the entire year. Miss D says she told her landlord and utility companies and believes she also told the Council when she left the property. There is no evidence Miss D told the Council of her leaving date. I therefore have no grounds to criticise the Council for seeking recovery of the unpaid council tax.
14. Miss D says the Council allocated a payment of £900 received in 2011 to a bill outstanding in 2006/7. However, as I understand it, the £900 payment relates to payments received in 2006/7, which is a period for which Miss D has cleared her arrears. I understand the communication Miss D received about the payment

---

being received in 2011 was therefore inaccurate. The Council has apologised for the confusion. I consider that a reasonable outcome for this part of the complaint.

15. Miss D says the Council's bailiff incorrectly said an enforcement agent had visited her property on 16 April 2018 at 8am when that is not accurate. Miss D says she has CCTV which shows nobody came to the door on that morning between 8am and 9am. I have seen the bailiffs' documentary records. This shows a bailiff visited Miss D's property on 16 April 2018 at 8am. I understand the bailiff company has asked Miss D to provide CCTV evidence to show nobody visited on that date at that time and it has not received any evidence. Miss D has now provided me with CCTV evidence to show no visit took place. I am therefore satisfied the bailiff records for 16 April are inaccurate. As I said earlier though, the Council has removed the bailiff fees because it failed to follow its usual practice by writing to Miss D before referring the case to bailiffs, given the passage of time. So, any costs connected with a visit that did not take place have already been removed by the Council. I therefore see no reason to pursue that issue further.

### **Agreed action**

16. The Council has agreed to remove the compliance fee and enforcement fees totalling £310 and has apologised for the confusion over reference to a payment in 2011.
17. Within one month of my decision the Council should:
- apologise to Miss D; and
  - deduct £100 from her council tax arrears to reflect the distress she experienced in having to deal with bailiffs rather than being given an opportunity to pay in 2018.

### **Final decision**

18. I have completed my investigation and found fault in part of the complaint which caused an injustice to Miss D. I am satisfied the action the Council will take is sufficient to remedy Miss D's injustice.

### **Investigator's decision on behalf of the Ombudsman**