

Wolverhampton City Council (06/B/16600) NEW

Maladministration causing injustice

Wolverhampton City Council made a man bankrupt over non-payment of his council tax debt, without fully considering all the alternatives. The Ombudsman said that the Council failed to consider the possibility of making a charging order against the man's home. It also gave him inadequate warning of the consequences of bankruptcy before commencing proceedings. The man now faces costs of £38,000 for a debt of £1,105.

The Ombudsman said: "The Council cannot, it seems to me, turn a blind eye to the consequences to the debtor of any recovery option it pursues. ... The dire and punitive consequences of bankruptcy, involving a multiplication of the original debt many times over and frequently incurring the loss of the debtor's home, must be a factor to be taken into account in deciding that the 'last resort' is indeed appropriate. I have seen no evidence that this relevant consideration was taken into account."

'Mr Ford' (not his real name) complained at the actions of the Council in making him bankrupt for council tax arrears in June 2005. Mr Ford sought to argue that he owed less than £750 at the time of the bankruptcy, but the Ombudsman found no grounds to support this. Mr Ford had arrears of £1,105 at the time bankruptcy proceedings commenced, but ended facing costs of some £38,000.

The Ombudsman considered the evidence that Mr Ford was on a low income and would appear to have had an entitlement to council tax benefit that could have significantly reduced these arrears. But the Ombudsman considered that no fault could be attached to the Council for not paying that benefit, which arose from Mr Ford's failure to co-operate with the claim process. The Ombudsman accepted the right of the Council to collect its council tax arrears and the limited options available to it in Mr Ford's circumstances. He noted in particular that the Council was not able to apply to the Department for Work and Pensions for a deduction of Mr Ford's Incapacity Benefit to repay arrears, as this benefit is not one where such a method of recovery is allowed. He noted also that the Council used bailiffs to try and collect the debt from Mr Ford, without success.

However, despite all of the above, the Ombudsman does not consider the Council followed due process in making Mr Ford bankrupt. First, he found that the Council gave Mr Ford inadequate warning of the consequences of bankruptcy before commencing proceedings, in breach of its usual practice. Second, he found that the Council failed to properly consider the alternative of seeking a charging order against Mr Ford's home.

The Ombudsman considered that, on the balance of probabilities, had such failings not occurred, then Mr Ford would have made an offer of repayment to the Council prior to the commencement of proceedings.

In order to put Mr Ford in the position that he would have been in had no maladministration occurred, the Ombudsman considered Mr Ford's bankruptcy should be annulled and that the Council should pay for this by arrangement with the trustee in his bankruptcy. However, the Ombudsman considered that it would not be right for Mr Ford to avoid liability for his debt. So, he makes the recommendation conditional that the Council should not make any payment that will lead to annulment of the bankruptcy until Mr Ford has first entered into a binding

arrangement with the Council to repay £1,105 of the costs that it will incur and to clear that debt as soon as is reasonably practicable (that debt may be secured by way of a charge on his property at the Council's request).

In addition, the Ombudsman recommended the Council to review its collection policy and procedures for local tax arrears in the light of this report in order to avoid a repeat of the maladministration found in this case.

31 March 2008