

**Report of: Monitoring Officer, Acting Director of Law and Governance**

<b>Meeting of:</b>	<b>Date:</b>	<b>Ward(s):</b>
Executive	28 November 2019	All

<b>Delete as appropriate:</b>		Non-exempt
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**SUBJECT: The Local Government & Social Care Ombudsman finding of Fault Causing Injustice****1. Synopsis**

- 1.1 The Local Government and Social Care Ombudsman (LGSCO) has issued a report finding fault on the part of the council, causing injustice to the complainant. The LGSCO published their report, along with an accompanying press release, on 17 October 2019.
- 1.2 The LGSCO decision was made on 4 October 2019 and relates to the council's delays in taking action to trace Mrs X for outstanding business rates.
- 1.3 Mrs X complains that the council unreasonably delayed in sending a demand for business rates for 1 April 2000 to 31 March 2001, for which she considers she is not liable. Mrs X alleged that, as a result, she cannot challenge the council's decision that she is liable for the business rates as she no longer has the evidence to do so.
- 1.4 Upon completion of its investigation, the council found that Mrs X was liable for the debt. The council obtained a liability order in November 2001 for the years billed.
- 1.5 Mrs X made various complaints to council including:
  - a) As a result of the council's delays, she cannot challenge the decision that she is liable for business rates as she no longer has the evidence to do so.

- b) There was no liability for the debt, as she did not lease the premises at the time the debt arose.
- c) The council should reimburse legal fees as a result of her having to instruct a solicitor.

1.6 The council maintained that:

- a.) the onus is on the charge payer (Mrs X) to ensure all outstanding bills are paid for the property leased at the time in question prior to and at the time of departing.
- b.) Mrs X did not notify the council that she had left the property or provide a forwarding address which caused the delay in tracing her.
- c.) A charge payer is not entitled to take the position that their responsibilities no longer exist because they caused the delay in finding them by leaving the property without providing a forwarding address.
- d.) It is in the public interest for the council to protect, collect and maximise business rate collection.
- e.) Digital developments, including social media, have made it easier to trace debtors.
- f.) Mrs X could have made an application to the court to have the liability order set aside.

1.7 Mrs X complained to the LGSCO. Upon investigating Mrs X's complaint, the LGSCO found in her favour. Several recommendations were made to the council to address the finding of fault causing injustice.

1.8 The council has accepted the LGSCO's findings.

## **2. Recommendations**

2.1 To note the contents of the LGSCO report dated 4 October 2019, a copy of which is attached as appendix one.

2.2 To note that the remedies recommended by the LGSCO have been accepted by the council.

2.3 To note the actions that will be taken by the council to implement the recommendations by the LGSCO.

2.4 To agree that a copy of this report and the Executive minutes will be sent to the LGSCO.

## **3. Background**

3.1 The Ombudsman service was set up following the Local Government Act 1974. Key changes to the Act were included in the Local Government and Public Involvement in Health Act 2007 and the Health Act 2009. The Act sets out how the Ombudsman is organised, the Ombudsman's powers, and the restrictions on those powers. The main statutory functions for the Ombudsman are: to investigate complaints against councils and

some other authorities; to investigate complaints about adult social care providers from people who arrange or fund their adult social care (Health Act 2009); and to provide advice and guidance on good administrative practice. In June 2017, the Local Government Ombudsman's title was changed to the Local Government and Social Care Ombudsman.

- 3.2 All complaints result in a decision. The LGSCO issues these decisions, either by way of a statement of reasons for the decision or a report. If the LGSCO decides that the council has done something wrong and that this fault has caused an injustice to the complainant, the LGSCO will suggest what the council should do to put this right. Most complaints result in a decision in the form of a decision statement. If the LGSCO decide to issue a public report on a complaint, the LGSCO will tell the council in advance and the council will have an opportunity to comment on a draft of the report before it is finalised. In the case of complaints about the council, the outcomes of these complaints are reported to Members by way of (1) an annual report and (2) a six-monthly Monitoring Officer report to Audit Committee.
- 3.3 Additionally, where a complaint of fault (i.e. maladministration, service failure, or failure to provide a service) is upheld and a formal report (or public interest report) is to be issued, this must be considered by Executive (for executive functions).
- 3.4 It is rare for the council to receive a formal report. This is the second public interest report the council has received in at least five years.

#### **4 Complaint Summary**

- 4.1 In the 1990's Mrs X leased premises for her business and was charged business rates.
- 4.2 Mrs X was liable for business rates from 1 April 1995 and bills were issued each financial year in accordance with business rates law. In 2001, the Council received notification of an insolvency notice (Individual Voluntary Arrangement) against Mrs X. This meant that the business rates charged between 1 April 1995 to 10 April 1996 were written off and a new account created from 11 April 1996. The Council re-issued new bills for business rates for April 1996 to 2001 for the new account. The bills were not paid, therefore the Council issued a summons and obtained a liability order in November 2001. The debt was passed to bailiffs and was subsequently returned to the council as they were unable to trace her.
- 4.3 The council attempted to collect the debt again in January 2017. The council eventually traced Mrs X in May 2017 and sent a demand for 1 April 2000 to 31 March 2001 for the sum of £1038.20. This is 20% of the debt. The council decided to write off the debt for April 1996 to March 2000 as it considered it was unlikely it could collect the full amount owed.
- 4.4 Mrs X disputed the liability and instructed solicitors who notified the council that Mrs X did not occupy the premises for the period in question and the council could not pursue the debt as it arose more than six years ago. The council advised that it obtained a liability order, which meant that there was no time limit in which to pursue the debt. Mrs X paid the debt in November 2017. In May 2018, Mrs X made a complaint to the council about the decision to pursue the debt and sought reimbursement of her solicitor's fees.

- 4.5 The council considered the complaint at all stages of the complaints procedure and maintained that Mrs X remained liable for the debt as Mrs X had not provided evidence she had vacated the premises before 2001. Mrs X provided additional information including a letter dated June 1998 advising the council she moved from the premises in May 1997. The council considered the evidence Mrs X provided was not sufficient to show the termination of the lease.
- 4.6 After a further complaint from Mrs X in August 2018, stating she could not provide information as she no longer had the records, the council contacted the landlord who denied that they had terminated the lease.
- 4.7 The council considered Mrs X's complaint at stage two of its complaints procedure and responded in October 2018. The council said the landlords no longer held records for 2001 and did not accept liability for the business rates. The council also said it could amend the liability if Mrs X could provide proof she surrendered the lease.
- 4.8 Mrs X complained to the LGSCO. The LGSCO found the council to be at fault as it delayed action in tracing Mrs X between 2001 when the bailiffs returned her account and 2017. The LGSCO expressed the view that the council did not consider if it was reasonable and fair to collect the historical debt. The council delayed in responding to Mrs X at both stages of the complaints procedure.
- 4.9 The council is at fault as it delayed in taking action to trace Mrs X for outstanding business rates. As a result of the 16-year delay, she was placed at a significant disadvantage as she no longer has the evidence to defend her position that she had moved from the premises in 1997, and to challenge the council's decision that she was liable for the business rates.
- 4.10 The LGSCO states it is not appropriate for the council to reimburse Mrs X for legal fees as she could have pursued the matter with the council and made a complaint without instructing a solicitor.
- 4.11 The LGSCO recommended and the council agreed:
- a) To remedy the injustice to Mrs X by writing off the debt and reimbursing £1038.20 paid by Mrs X.
  - b) To make a payment of £100 to acknowledge the frustration and avoidable time and trouble caused to Mrs X.
  - c) In addition, to review its Council Tax and Business Rates Collection Policy to ensure it considers if it is fair to pursue a historical debt when the passage of time may prevent a person from being able to challenge the debt. The council should explain to the LGSCO the action it has taken to improve its practice in this area.
- 4.12 Following receipt of the draft LGSCO decision, Revenues and Technical Services has reimbursed Mrs X the £1038.20.
- a) A letter and a payment of £100 will be sent to Mrs X.
  - b) The Council Tax and Business Rates Collection Policy will be reviewed over the next three months and an update will be given to the LGSCO

## **5 Monitoring Officer Comments**

- 5.1 Where the LGSCO completes an investigation s/he must prepare a report and send a copy to the complainant, the local authority and other parties relevant to the complaint, according to s30(1) of the Local Government Act 1974.
- 5.2 Where fault is found and a formal report is to be issued by the LGSCO, the Monitoring Officer is under an obligation to prepare a report for the Executive under s5A (for executive functions) of the Local Government and Housing Act 1989. The Executive is also under a duty by virtue of s31 (2) LGA 1974 to consider the report of the LGSCO.
- 5.3 The Head of Paid Service (Chief Executive) and s151 Officer are required to be consulted so far as reasonably practicable in the preparation of a maladministration report, s5A (5) the Local Government and Housing Act 1989. Both the statutory officers have been duly consulted.
- 5.4 The Monitoring Officer is also required to arrange for a copy of this report to be circulated to all members of the authority. The Executive agenda and papers are sent to all the council's members; accordingly, the circulation of this report complies with that requirement.
- 5.5 Further, the authority is under an obligation (s5A(6)(a) and (8)) to:
- (a) consider the report within 21 days of the report being sent to all members of the council; and
  - (b) as soon as practicable after the Executive has considered the report, the Executive must prepare a report which specifies: (1) what action, if any, the Executive has taken in response to the report, (2) what action, if any, the Executive proposes to take in response and when it proposes to take that action, and (3) the reasons for taking the action, or as the case may be, no action.
- 5.6 Copies of the Executive report on the action taken or proposed to take, must as soon as practical, be sent to each member of the authority and the authority's monitoring officer (s5A(9)). It must also be sent to the LGSCO within 3 months.
- 5.7 The local authority must give public notice in newspapers and such other ways as appear appropriate and copies of the report shall be available for inspection by the public for a period of three weeks (s30(4), (5) LGA 174).
- (a) The public notice was placed in the Islington Gazette on 24 October 2019 and Islington Tribune on 25 October 2019.
  - (b) The report was available for public inspection at the Town Hall, Upper Street, London and 222 Upper Street, London from 31 October 2019.
  - (c) The notice and report have also been published on the council's website, and
  - (d) Publication of the LGSCO's report as an appendix to this report ensures it remains in the public domain.
- 5.8 Where the LGSCO reports there has been fault resulting in injustice, the report shall be laid before the authority and it shall be the duty of the authority to consider the report and within 3 months of receipt (or such longer periods as the LGSCO may agree in writing), notify the LGSCO of the action which the authority has taken or proposes to

take, according to s31 of the Local Government Act 1974. This report to the Executive complies with the first part of this legal requirement. Sending a copy of the report and the Executive minutes to the LGSCO will comply with the second part of this legal requirement (provided Executive agrees the recommendations).

- 5.9 The council may incur expenditure as appears appropriate in making a payment to a person who has suffered injustice in consequence of maladministration or failure (s31(3) Local Government Act 1974). In addition, the council has the power to pay compensation or assist a person who has suffered injustice as a result of maladministration (s92 Local Government Act 2000).

## **6 Implications**

### **6.1 Financial implications:**

A total of £1038.20 has been reimbursed to Mrs X and £100 will be paid for avoidable time and trouble and frustration. Payments are funded directly by the service where the fault occurred. The element to be written off will be managed through collection fund budget and in regards to reimbursements the costs will be covered within the departmental budget.

### **6.2 Legal Implications:**

The legal implications are set out in the body of the report, in particular the Monitoring Officer's comments at paragraphs 5.1. to 5.9

### **6.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:**

There are no environmental implications arising out of this report.

### **6.4 Resident Impact Assessment:**

A resident impact assessment has not been carried out in relation to this LGSCO decision.

## **7 Reasons for recommendations**

- 7.1 The council accepts the LGSCO findings and there is no reason not to follow the recommendations.
- 7.2 The Acting Director of Financial Operations and Customer Services has agreed the course of action. In response to the draft ombudsman report, the council sought Counsel's advice relating to the fairness of the collection of historical debt. It was recognised that there may be particular lessons in relation to evidence provided in this particular case, however the council remains of the opinion that it is fair to collect outstanding debt so long as the council has appropriate evidence to support it.
- 7.3 Compliance with the above recommendations ensures that the statutory requirements of the Local Government Ombudsman Act 1974 and Local Government Housing Act 1989 are met.

## **Appendices**

- Report by the Local Government and Social Care Ombudsman dated 4 October 2019.

Final report clearance:

**Signed by:**

A handwritten signature in black ink, appearing to read 'P Fehler', is centered on a light gray rectangular background.

5 November 2019

Monitoring Officer, Acting Director of Law and Governance      Date

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