

APPEALS PANEL 3

MONDAY 25 JULY 2016 AT 10.00AM

PRESENT: Councillors Collier (Chairman), Bomford and Williams (as substitute for Councillor Franklin).

OFFICERS: Director of Governance
Director of Resources
Recovery Officer

ALSO

PRESENT: Appellant & Representative.

1. APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor Collier be appointed as Chairman of the Panel for the Municipal Year 2016/17.

2. APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor Franklin.

3. DECLARATIONS OF INTEREST

There were no declarations of interest in respect of the complaint.

4. PUBLIC AND PRESS

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

5. COMPLAINT AGAINST COUNCIL TAX

The Chairman welcomed the Appellant and his representative and introduced the Panel.

The Appellant stated that he had not received a copy of the agenda document pack he was advised that the papers had been dispatched to him by means of signed delivery on 13 July 2016. The Appellant was provided with a copy of the agenda document pack.

The Chairman asked the Appellant to summarise his appeal as clearly as possible.

The Appellant explained that his complaint broadly covered the following areas: the Council's issuing of bills and requests for payments relating to Council Tax had not

taken into account his ability to meet the paymentschedule; the Council had been too quick to engage their debt collection agents in respect of the arrears on his account; the Council's debt collection agents had not acted properly in their dealing with him; the Council had wrongly allocated money to various accounts; and, he had felt Council Officers had dealt with his complaint in a threatening and bullying way.

The Appellant informed the Panel that he had arrears on his Council Tax account for the financial year 2013/14; the debt had been passed to the Council's debt collection agents. The Appellant had made payment in full of the debt to the Council on 15 October 2014, however, the Council had not advised their agents of this payment for thirteen days, which had resulted in additional enforcement charges being added to his account, increasing his debt unnecessarily.

The Appellant informed that Panel that the bailiff who had visited his property on 17 October 2014 had taken a video recording of the visit and had claimed that the Appellant had requested that his payment to the Council be transferred to the collection agency, which the Appellant refuted. Following the bailiff's visit, he had requested a copy of the video footage, but had been advised by the company that it no longer existed, which the Appellant did not accept was true.

The Appellant's Representative contended that the collection agent had amended documentation relating to the Appellant's account, and had not conducted visits to his property at the times advised. As a result, of the amended documentation the company had imposed additional enforcement charges on the Appellant's account; he considered this to be fraudulent activity. The Appellant informed the Panel that he had lodged a complaint with the collection agent, but in dealing with this, the company had not adhered to its own procedures in relation to timescale for providing a response.

The Appellant had complained to the Council about the collection agent's actions and their handling of his complaint, but the Council had refused to investigate. The Appellant referred to guidance and legislation which he considered placed a duty on the Council to investigate complaints in respect of agents acting in its behalf.

The Appellant had contacted the Police to investigate the fraud that he believed the Council's collection agency had carried out, but no action had been against the company was pursued. The Appellant noted that following the police investigation, the Council's collection agent revoked the enforcement fee imposed in October 2015, which he considered as an admission by the company of fraudulent actions in respect of his case. The Appellant stated the agency had admitted that their enforcement fee had been levied on his account on 17 October, after his full payment of the debt had been made.

In terms of the level of payments required to pay-off his historic debt and meeting his ongoing Council Tax liabilities, the Appellant felt those were not calculated based on his ability to pay, and therefore were not in the public interest.

The Appellant felt the payments he had made were sufficient to cover the current year's Council Tax liability and to reduce the level of arrears. However, the Council had allocated the full amount of payments made by him to the arrears and none to the current year's liability, as a result, he had accrued arrears in the current year. This had led to further enforcement action being taken against him which had increased the costs to the appellant as the Council's debt collection agent had imposed enforcement charges.

The Appellant considered the Council had been too quick to begin enforcement action in respect of debt accrued on his 2014/15 Council account which had arisen due to the Council's allocation of all his payments to the historic debt. The Appellant informed the Panel that the 2014/15 account had become the subject of court proceedings, however, the hearing had been adjourned as the Officer representing the Council had not been happy to proceed with the case as the amount owed on the account had been contested.

In terms of the Council's dealing with his complaint, the Appellant considered that the Council's claim that they could not provide the information he had requested on the basis that it had been archived was unsatisfactory. He acknowledged that he had made repeated requests to the Council for information, but he did not feel the volume of correspondence to the Council was vexatious and was in fact a consequence of Officers not providing the information he had requested. Further, he had been incorrectly advised that he was required to complete a specific form to request information under the Freedom of Information Act.

The Appellant felt that comments made to him in letters from the Director of Resources that he had made statements which were defamatory and libellous were unfounded and a disproportionate response to his correspondence.

In response to questions from Panel Members and the Director of Governance, the Appellant clarified the following:

- The details of his payments in respect of his 2013/14 and 2014/15 account.
- That he appreciated he had a history of debt and repayment over a number of years relating to his Council Tax account and that Council Tax bills must be paid.
- That a letter from the Council had prompted him to pay in full the outstanding debt of the 2013/14 account.
- He agreed that his requests for information had been persistent and referred to the same information.
- He felt that the Council should be able to identify when payments had been made to the collection agent to the relevant Council Tax account.
- He acknowledged that historically his payments to the Council had been irregular, and in one instance three months had transpired between payments.
- He had made payments to his account via a card at the post office.

- He had not visited the Civic Centre to talk to the Officer involved in his case.

In conclusion the Appellant felt the Council actions regarding his arrears and ongoing liability had not adhered to relevant guidelines and legislation that this had created a situation where the Appellant faced increasing costs as a result of enforcement action costs being imposed. The Council's handling of his complaint had not met the standards the Appellant had expected.

The Appellant and his representative thanked the Panel for hearing the complaint.

The Panel thanked the Appellant for his input and advised that he would be informed by letter within 20 working days of the Panel's decision. If the appellant was not happy with the decision his next course of action would be to take the complaint to the Local Government Ombudsman, details of which would be included in the letter. The Appellant and his representative left the meeting at 11:40am.

The Director of Resources and the Recovery Officer were invited to the meeting.

The Chairman summarised the Appellant's complaint and invited the Officers to respond to the issues raised.

Concerning the matter of payment allocation, the Director of Resources explained that instalments received had to be of an amount recognisable as meeting current year's liability, otherwise the payment had to be allocated to the outstanding debt.

The Recovery Officer informed the Panel that the Appellant had been advised of how instalments were apportioned, however, the Appellant had begun making irregular payments in 2014. He added that generally, residents in arrears contacted the Council to agree a schedule of payments to pay down arrears and meet current liability payments, in this case, despite offers, the Appellant had not made any such contact.

In response to a question from the Director of Governance regarding the potential for historic debt charges to cause arrears to be incurred on the current year's liability, the Recovery Officer explained that the Appellant had payment arrears in both 2013/14 and 2014/15 financial years.

The Recovery Officer described how following the Appellant's payment in full of the arrears relating to his 2013/14 account had been paid, he had written to the Appellant inviting him to set up a payment schedule debt relating to the 2014/15 which had also been in arrears. The Appellant had not responded to this communication and the arrears had been the subject of court action, before being passed to the Council's debt collection agency.

The Director of Resources added that the Appellant had received a number of notifications regarding Council Tax payments in a given year, beginning with the initial

bill which all households received, which was followed up with a reminder when payments were not met, and letters advising the Appellant of the action the Council proposed to take, such as commencing court proceedings.

The Recovery Officer explained that the Council's debt collection agency also had a duty to contact the Appellant in writing advising him that they were administering the debt and offer the opportunity to set up a payment arrangement. Therefore, the Appellant had been notified of the enforcement action a significant number of times, however, no communication from the Appellant had been received by either organisation.

In respect of the enforcement fees levied by the Council's collection agent, legislation had recently been enacted setting out in statute the level of fees bailiffs were able to impose. Regarding the Council's payments to their debt collection agency the Taking Control of Goods (Fees) Regulations 2014 stipulated that when a debt was owed the first allocation of the monies received had to be put to clearing costs owing to the enforcement agent.

Turning to the issue of the Appellant's complaint related to the Council's agent making and disposing of video footage during a visit to the Appellant's home, a Member asked what procedures the organisation was required to comply with regarding such data.

The Recovery Officer explained that the company was required to keep video recording taken at visits for a period of three months, after which time the data had to be destroyed, unless a complaint or issue relating to it had been raised. The Appellant had not submitted his request for the footage during that time, and consequently the footage had been destroyed.

The Member responded by noting the Appellant had raised a complaint regarding the disposal of the video footage as he asserted the Council's agent had made fraudulent statements in regard to it. The Appellant had instigated a complaint with the Council's agent in relation to this, but had not been satisfied with how it had been addressed, part of his complaint to the Panel was that the Council refused to become involved with the complaint, even though it had a duty to do so, she asked why the Council had not taken steps to address the Appellant's concerns in respect of this complaint.

The Recovery Officer advised the Panel that the Council had a Service Level Agreement with its agent's that allowed the collection agent the opportunity to address in the first instance complaints relating to their service.

Regarding the Council's refusal to become involved in the Appellant's complaint to the agent, Officers had advised the Appellant in writing on 4 July 2015 that they would not investigate until the complaints process with the collection agent had concluded. The Appellant was advised that should he not be satisfied with the response from the agent,

the Council would carry out an investigation and he was given information on how to request this, however no such request had been received from the Appellant.

The Council's collection agent had taken the decision to waive the enforcement fee levied for the visit in February 2015, without an admission of liability on the grounds that continuing correspondence with the Appellant was too costly.

Turning to the matter of how the Appellant's complaint against the Council had been addressed, the Recovery Officer explained that it had been difficult to identify from correspondence the information the Appellant required, however, every effort had been made to provide him with the information. The Recovery Officer informed the Panel that he had taken personal responsibility for dealing with correspondence received from the Appellant, by diverting all communication directly to himself which was above and beyond the usual procedure for dealing with correspondence.

A Member asked if Officers had declined to provide information requested by the Appellant on the grounds that it had been archived.

The Recovery Officer advised the Panel that when Council Tax account information was archived the data was stored in a consolidated format which did not illustrate individual payments that information. Additionally, the archived information was stored on a separate system than that used day to day by Officers.

The Director of Resources informed the Panel that the Appellant had requested information relating to his account going back to 2005, however the Council was legally required to keep such data for a period of six years, after which time it had a duty to destroy the information, therefore Officers had not been able to comply with this request. However, the Recovery Officer and other Officers had spent a deal of time extracting data stored in the archived system to provide the Appellant with information relating to his account covering a five year period.

The Recovery Officer added that in addition to the archived data he had also provided the Appellant with the payment history information which had given the Appellant a detailed history of the account.

In response to a question from the Director of Governance, the Recovery Officer confirmed that he had directed the Appellant to complete a specific form to instigate a Freedom of Information request. He had at the time of writing to the Appellant understood that was a requirement of the procedure for enacting a Freedom of Information request, but he had subsequently been advised that this was not necessary, and acknowledged that it had been a mistake.

The Director of Resources explained that the ongoing correspondence with the Appellant, who often made repeated requests for the same information, had in his view

become excessive. Further the Appellant had included in his letters statements regarding the conduct of Officers that were unjustified and upsetting.

The Director of Governance informed that Panel that in legally it was not possible to defame a Council, and in general terms for statements to be considered libel or defamatory they had to be published and publicly available. Private correspondence was not considered to meet this criteria.

The Director of Resources acknowledged that the statements in his correspondence to the Appellant which had described his comments by as potentially libellous or defamatory had been erroneously made, and he apologised to the Panel.

In response to a question from a Member regarding the Council's current position regarding the Appellant's account the Recovery Officer advised that the account had been put on hold until the Appeals Panel process had been completed.

The Panel thanked the Officers for their input and they left the hearing at 12:40pm.

The Panel then considered the presentation from the Appellant and the evidence that had been presented to them, prior to and during the hearing and:

Resolved:

That the Panel in part dismissed and in part upheld the complaint on the basis that:

- (1) The Officers had followed the relevant legislation and procedures relating to the apportionment of monies, and the undertaking of enforcement action.
- (2) That the Council had not been requested to further take up the Complaint against the Enforcement Agent, acting as the Council's Agent and, in any event, the said Enforcement Agent had complied with its legally complaint policy relating to the disposal of video footage. Further, this matter had not been relevant as to how monies were apportioned.
- (3) That on behalf of the Council, the Panel apologise for any upset caused as a result of statement by Officers that aspects of correspondence from the Appellant were libellous and/or defamatory.
- (4) That on behalf of the Council, the Panel apologise for any inconvenience caused as a result of giving unnecessary directions to access data under Freedom of Information request.

(Meeting closed at 12:50pm)