

Report

on an investigation into
complaint no 11 007 684 against
Blaby District Council

10 July 2012

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Table of Contents	Page
Report summary	1
Introduction	3
Legal and administrative background	3
Investigation	4
The Council's view	7
Conclusions	9
Multiple levies	9
DVLA checks	9
Multiple fee-charging	9
Head H fee	10
Delay	10
Finding	10

The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Mrs Smith

the complainant

Report summary

Benefits and tax

Mrs Smith complains that bailiffs employed by the Council to collect her council tax arrears had not acted within the law and had overcharged her. She also complains that the Council failed to properly answer her queries and complaints about these issues.

The Ombudsman finds that the Council failed to exercise proper control over the actions of its bailiffs and the fees it charged. The bailiffs had unlawfully levied all eight accounts with the same two vehicles, failed to carry out DVLA checks on the ownership of the vehicles and charged eight statutory visit fees on two occasions for one visit by one bailiff. The Council also failed to properly investigate Mrs Smith's complaints until she complained to the Ombudsman. These faults caused Mrs Smith stress, anxiety and significant time and trouble in pursuing her complaints with the Council and the bailiffs.

Once the Ombudsman became involved the Council:

1. removed the levies and associated fees;
2. carried out DVLA checks on the vehicles which showed they did not belong to Mrs Smith or her partner so removed the remaining levies and associated fees; and
3. negotiated a new contract with its bailiffs only allowing one fee to be charged for one visit even where multiple accounts are involved.

Finding

Maladministration causing injustice, remedy agreed.

Agreed remedy

In addition to the above actions already taken the Council has agreed to pay £300 to Mrs Smith for the distress and inconvenience she was caused which it will offset against the outstanding council tax arrears.

Introduction

1. Mrs Smith complained that bailiffs employed by the Council to collect her council tax arrears had not acted within the law and had overcharged her. She also complained that the Council failed to properly answer her queries and complaints about these issues.
2. The investigator has considered the complaint and the documents provided by Mrs Smith, discussed the issues with her, made enquiries of the Council and considered the comments and documents it provided.

Legal and administrative background

3. My powers are defined by the Local Government Act 1974 as amended by the Local Government and Public Involvement in Health Act 2007. One restriction on my powers is that I cannot investigate a complaint where the complainant has an alternative remedy by way of proceedings in a court of law and it would be reasonable for them to use that remedy¹.
4. Where a sum of council tax is unpaid the Council may seek an order from the magistrates' court known as a liability order. This confirms the amount owed and who is liable to pay it. When a liability order has been made, the Council has a number of options available to pursue the debt. One option is to instruct bailiffs. Regulation 45 of the Council Tax (Administration and Enforcement) Regulations 1992 gives the Council power to do this.
5. Bailiffs may levy the appropriate amount by distress and sale of the debtor's goods². The "appropriate amount" is any outstanding sum in respect of which the liability order was made and charges connected with the distress.
6. The process of distress consists of three stages: the entry into the premises, the seizure of goods, and the subsequent securing of goods (generally called impounding). Impounding places the goods in the custody of the law and paves the way for their sale. Goods may be impounded on the premises or removed to a pound. Impounding on the premises can involve the bailiff taking 'walking' possession of the goods. This is where the debtor is left in charge of the goods. Walking possession must be agreed with the debtor and a signature obtained at the time distress is levied. The debtor agrees that the goods will remain on his/her premises and will not be sold; to advise appropriate third parties of the distress; to pay the bailiff a small daily fee; and to permit re-entry for the removal of the goods if this is later considered necessary by the creditor or the bailiff acting on his behalf.

1 Local Government Act 1974, Section 24 (6) (c)

2 Council Tax (Administration and Enforcement) Regulations 1992, regulation 45 (1)

7. Constructive seizure is where a bailiff is not in a position to be able to physically contact the goods. This type of seizure is unlawful.
8. If goods are jointly owned they can be seized even if the debt is in only one name. But if the goods do not belong to the debtor, they cannot be seized. Bailiffs often quote a court case (*Observer Ltd v Gordon 1983*) to support their view that they do not need to prove ownership of the goods. But the Ombudsman considers the circumstances of that case are quite specific. In cases where the debtor is not present (for example a bailiff levying on a car outside premises where there has been no reply at the door) or ownership is disputed, then she considers it reasonable for the bailiff to check ownership with the DVLA.
9. Bailiffs can charge fees and costs for council tax debt recovery and the fees applicable in relation to this complaint are set out in Schedule 5 of the Council Tax (Administration and Enforcement) Regulations 1992. These charges include a statutory fee of £24.50 for a first visit and a second fee of £18.00 for a second visit. They can also charge the reasonable costs and fees incurred for one attendance with a vehicle with a view to the removal of goods where, following the levy, goods are not removed.
10. Head H of Schedule 5 to the regulations says that the bailiffs can also charge a fee where goods have been removed but are returned after payment has been made in full. This is known as a Head H fee. There is considerable debate over when this fee can be applied. Some bailiffs charge it if an arrangement is made but no levy undertaken and call it a redemption fee. Others believe this is incorrect because no goods have actually been removed. My view is that Head H fee should not be charged when an arrangement is made but no goods are removed.
11. An HPI (Hire Purchase Information) check is carried out to establish if there is any outstanding finance on the car which may affect ownership of the vehicle. Bailiffs can charge the reasonable costs of carrying out such a check to the debtor.
12. If a debtor considers the bailiffs' fees to be excessive he or she can make an application to the County Court which will assess the fees to decide if they are legal and reasonable.

Investigation

13. Mrs Smith did not pay her council tax for a number of years and arrears built up in the region of £10,000. The Council had obtained eight liability orders for the years from 2002/03 until 2009/10. After several previous attempts at recovery via bailiff action, the Council instructed a different bailiff company to collect the debt.
14. On 7 March 2011 the bailiffs say they issued a letter to Mrs Smith on each account asking for payment to be made in full within the next seven days. The bailiffs received no reply to these letters and so the cases were allocated to a

bailiff. He attended Mrs Smith's property on 15 March 2011. She refused him entry. On this occasion there were two cars parked on the driveway neither of which belonged to Mrs Smith or her partner. The bailiff visited again on 23 March 2011 but there was no-one at home.

15. On 25 March 2011 Mrs Smith returned home to find eight notices of distress, one for each council tax account, listing the two cars which had previously been parked on Mrs Smith's drive. She had not signed the notices. She says that on 25 March 2011 only one car was parked there.
16. The bailiffs applied first and second visit fees in addition to a levy fee for each council tax account. The total of the visit fees was £340 and for the levy fees, £476. They also applied one attendance fee with a van of £110, two HPI check fees totalling £20 and one Head H fee of £24.50. The total of all the charges came to £970.50.
17. On 28 March 2011 Mrs Smith sent an email to the bailiffs asking for details of the fees charged and the identity of the bailiff who attended. The bailiffs replied with the requested information.
18. The bailiffs say they sent a further letter to Mrs Smith on 9 April 2011 warning of a van visit. Mrs Smith says she did not receive this. On 20 April 2011 the bailiffs say an enforcement bailiff attended the property and obtained a payment of £440.08.
19. Mrs Smith says on 20 April 2011 four bailiffs attended her property and tried to force entry into her home, two via the back door and the other two through the lounge window and then through the garage. Mrs Smith called the police and her partner. When her partner arrived one of the bailiffs clamped the vehicle he was driving and another bailiff sat in it. They demanded payment of £440.08 before they would release the vehicle. Mrs Smith's partner said the car did not belong to him and he paid the money. He also agreed to pay them £150 per month. By the time the police arrived the car had been released.
20. During May 2011 Mrs Smith made a complaint to the bailiffs. The bailiffs initially replied saying that only two bailiffs had attended her property on 20 April 2011. In order to cancel the levy on the cars they said she needed to provide proof of third party ownership. In respect of the debts they said she needed to honour the agreement to pay £150 per month and provide full details of her finances.
21. Mrs Smith argued that the levy was invalid as the notices of distress had not been signed by her and the cars did not belong to her. She also said the van fee should be removed because the levy was invalid. She insisted four bailiffs had attended.
22. On 13 June 2011 Mrs Smith complained to the Council. She raised queries about:
 - a. the way in which the levy was carried out given that only one vehicle was on the driveway on the 25 March 2011;

- b. the fact that the levy had been applied across all eight accounts;
 - c. why the bailiffs had not checked ownership of the vehicle with the DVLA prior making the levy (in accordance with an article recently published by the Ombudsman);
 - d. the way in which the bailiffs had obtained payment of £440.08 and impounded a car which was not subject to a levy;
 - e. the inaccurate information provided by the bailiffs about the number of bailiffs who visited on 20 April 2011.
23. She also requested that the Council recall the debts from the bailiffs and set up an affordable payment plan directly with the Council.
24. The Council replied on 24 June 2011. It said:
- a. The levy was carried out correctly on 25 March 2011;
 - b. The levy had been correctly applied to each account;
 - c. It was reasonable to expect a person who had allowed a car to be parked on their drive to know who owned the car and to obtain the relevant documents to prove this. There was a cost involved in checking ownership with the DVLA which would have to be passed on to the debtor, so it was preferable to ask the debtor to provide the necessary information. It said it would address the issue of checking with the DVLA first at its next review meeting with the bailiffs;
 - d. it did not directly answer the questions relating to the events on 20 April 2011 or the number of bailiffs who had attended, but said the bailiffs actions had been reasonable.
25. The Council refused to recall the debts from the bailiffs as it considered their actions had been reasonable. It said the Council had given Mrs Smith ample opportunity to pay the debts and avoid the additional charges
26. On 30 June 2011 Mrs Smith escalated her complaint to stage two of the Council's complaints procedure. The Council replied on 11 July 2011 saying that all her questions had been answered and Mrs Smith should complain to the bailiffs directly with regard to the cars on the drive.
27. The bailiffs responded formally to Mrs Smith's complaints on 12 July 2011. They said the bailiff who carried out the levy on 25 March 2011 recalled seeing an insurance document on the front seat of the car containing the name of Mrs Smith's partner. Mrs Smith says this was not possible as the car did not belong to him and his insurance document was in card form in his wallet.
28. The bailiffs also said that one of the bailiffs who attended on 20 April 2011 had logged a call to say that Mrs Smith had refused entry to the property and her partner had threatened violence towards them. Mrs Smith's partner was going to ring the police. They went on that payment was obtained in full so the police were

satisfied with the bailiffs' actions. They did not uphold the complaint and said that if they did not receive payment within 10 days they would allocate the case to a second enforcement bailiff.

29. Mrs Smith replied to the bailiffs on 15 July 2011. She said none of her complaints had been properly answered by either the bailiffs or the Council. She disputed that any insurance documents could have been in the car on the driveway. She said there was no mention of the second car on which the Council had placed a levy but had not been there on 25 March 2011. She said the bailiffs had not previously alleged violence by her partner and this had not been mentioned to the police when they arrived. She also said no-one had answered the complaint about the alleged forced entry into her home or the impounding of a vehicle with no levy and demanding payment before release. She had not received the 'van notices' allegedly sent on 9 April 2011.
30. Mrs Smith said only one set of visit fees (£42.50) rather than eight (totalling £340) should have been made and quoted a court case in support of her view. She said she had made payments directly to the Council.
31. The bailiffs replied to Mrs Smith on 2 August 2011. They said the bailiffs on 25 March 2011 recalled seeing both vehicles on the drive but specifically the documentation in one of them. The two bailiffs who had attended on 20 April 2011 had now left the company and so no further information was available about their actions beyond the notes they made. The reply confirmed that two assistants also attended on 20 April 2011, substantiating Mrs Smith's view that four bailiffs were present at her property on that day.
32. In respect of clamping the car which Mrs Smith's partner had been driving, the response said that bailiffs can seize and remove any goods they have reason to believe belong to the debtor. Prior to removal, a notice of distress must be completed in respect of the goods identified. But in this instance no goods had been removed. It also said bailiffs were entitled to immobilise a vehicle to prevent an avoidance of distress by its removal from the premises.
33. The bailiffs apologised for providing some inaccurate information. They said that it was not reasonable for bailiffs to make enquiries as to ownership and quoted the court case cited above in support of this view. They also said it was lawful to apply visit fees to all liability orders. They said the Council had confirmed the accounts were to stay with them and that Mrs Smith should make monthly payments of £150 to them.

The Council's view

34. Mrs Smith then complained to the Ombudsman. Enquiries were made on 18 August 2011 and the Council replied on 15 September 2011.

35. The Council said Mrs Smith needed to provide third party ownership in respect of the cars before the levy could be cancelled. With regard to checking with the DVLA, the bailiffs said they were aware of the Ombudsman's advice. But given the 14 day delay in carrying out a check they felt this would allow a debtor to remove a vehicle and avoid the levy so it was reasonable to ask for third party proof. The Council supported the multiple charging for one visit by one bailiff. It said the fees were legally incurred and proportionate. It said it had not recalled the debts from the bailiffs but was prepared to enter into an attachment of earnings arrangement as long as this was equal to or more than the arrangement in place. It would not waive the bailiff fees.
36. The Council did accept that goods can only be subject to one levy while that debt remains outstanding. It had removed both vehicles from six of the accounts and one from each of the remaining two. It cancelled the levy fees (£392 in total) in respect of the six accounts with no remaining levy.
37. Further enquiries were made on 5 October 2011, and the Council's view that a DVLA check was not necessary was queried. The Ombudsman's view of the court case quoted by the bailiffs was that the circumstances of the case were quite specific. In cases where the debtor is not present when a levy is made, the Ombudsman considered that a check with the DVLA should be carried out. Neither Mrs Smith nor her partner were present on 25 March 2011 and Mrs Smith says that only one of the cars was on the drive on 25 March 2011.
38. On 13 October 2011 the Council confirmed that now the matter had been brought to its attention it did not consider it was acceptable for the bailiffs to carry out a levy on both vehicles without a DVLA check. It would ensure this did not happen in the future and said it would now carry out a DVLA check. It did so on 11 October 2011.
39. The DVLA did not reply until 10 January 2012. It confirmed that neither of the vehicles belonged to Mrs Smith or her partner. On 1 February 2012 the Council wrote to both firms of bailiffs it uses for debt recovery. It said the DVLA checks had not cost anything and requested that the bailiffs carried out DVLA checks in future where ownership is disputed.
40. The Council wrote to me on 9 February 2012 confirming that the levy had been lifted on 19 January 2012. In respect of multiple fee-charging it said it was a lawful practice but it would change this in the new bailiffs' contracts.
41. On 19 March 2012 the Council confirmed that it had cancelled the levy, attendance and Head H fees for the remaining two accounts amounting to £238.50. The new bailiff contract started in January 2012 and applied to all Leicestershire Authorities. The new contract only allowed one fee to be charged per visit and for cases to be amalgamated.

Conclusions

42. The Council has an obligation to collect council tax and to pursue people who do not pay. Mrs Smith has not paid her council tax for some considerable time. She also failed to honour the payment arrangements made to clear the debt. So the Council was entitled to take enforcement action against her, including instructing bailiffs. But the Council should ensure that the bailiffs who act on its behalf comply with the relevant regulations and that debtors are charged only sums which are properly due. It is clear this did not happen in Mrs Smith's case.

Multiple levies

43. The Council agrees that the bailiffs should not have put a levy on all eight accounts with the same goods. This was maladministration. I welcome the action taken by the Council during the investigation to rectify this matter and remove the levy fees of £392.

DVLA checks

44. The Council agreed that the bailiffs should not have put a levy on the vehicles without carrying out a DVLA check first. I welcome the steps it has taken to rectify this issue by carrying out a DVLA check itself and removing a further £238.50.
45. I accept that there may be circumstances where it is not practical to make a DVLA check before making a levy but in every case the bailiffs should establish ownership through the DVLA before removing goods to sell.

Multiple fee-charging

46. I understand that the multiple fee-charging is legal. But I consider that charging £340 for two visits by one bailiff is disproportionate and places a wholly unreasonable burden on people already in debt. I am pleased that the Council has entered into a new contract with its bailiffs preventing multiple fee-charging in the future. I note this applied to all authorities across Leicestershire who have entered into the same contract. But the injustice to Mrs Smith remains unrecognised and I consider the Council should take some action to rectify this which I shall set out below.
47. I am issuing this report in the public interest because the practice of bailiffs' 'double charging' for visits is not uncommon. These bailiffs were acting on behalf of the Council and it was within the Council's control to contractually curb excessive charges by the bailiffs. I would expect local authorities and their agents to consider the reasonableness of their practice in this area in future and I am pleased that this Council has now done so.

Head H fee

48. I note the bailiffs charged a 'redemption fee' of £24.50 under Head H of Schedule 5 in respect of one of the vehicles on the 2005 liability order. This fee was removed when the Council established the car did not belong to Mrs Smith. I welcome this action. But the Head H fee should not have been applied on the facts of this case: the goods were not 'made available for collection by the debtor' as they were never removed. This was maladministration.

Delay

49. I have also concluded that the Council has taken too long to acknowledge the fault in this case. Mrs Smith raised concerns about the failure to check ownership of the cars and the way in which the levy was carried out in June 2011. The Council did not investigate or consider her complaint properly but simply agreed with the bailiffs' response. It wrongly stated that the bailiff was correct to levy goods on all eight accounts simultaneously and not to carry out DVLA checks. This delay was maladministration.
50. I am also concerned that the Council failed to properly investigate the allegation that the original levy on 25 March 2011 was unlawful because it was carried out on a car which was not on Mrs Smith's premises, in the absence of Mrs Smith and the walking possession agreement was not signed by Mrs Smith. There is an argument that this was constructive seizure and thereby unlawful. The only mention of this issue was in the bailiffs' letter of 2 August 2011 when they said the bailiff recalled seeing two vehicles. I believe the Council should have investigated this issue further. But as the levy and associated fees have now been cancelled I have not pursued this any further.
51. Similarly the Council failed to investigate the very serious allegation that on 20 April 2011 four bailiffs tried to break into Mrs Smith's property and obtained money from Mrs Smith's partner by clamping and taking occupation of a car which was not his. The bailiffs did not raise the allegation of threatening behaviour by Mrs Smith's partner until July 2011 despite extensive email correspondence prior to this and did not admit four people had attended until its letter of 2 August 2011. Given the seriousness of the allegation and the fact that Mrs Smith had evidence she had called the police because she felt threatened, I consider it was maladministration for the Council not to have taken her complaint seriously and investigated it. Instead it directed Mrs Smith back to the bailiffs. Given the time that has now elapsed and the fact that the bailiffs concerned have left the company I do not make any specific recommendation beyond that in paragraph 54 below.

Finding

52. Maladministration causing injustice, remedy agreed.

Remedy

53. I understand that Mrs Smith still owes a large amount of council tax with no regular payment arrangement in place. The Council is entitled to recover this by the means available to it. It has however reduced the fees charged by £630.50 and amended its contract with the bailiff.
54. But I also consider the Council ignored the fault in the bailiffs' actions, even when Mrs Smith drew the fault to its attention, and failed to properly investigate the issues raised until a complaint was brought to my office. In recognition of her distress and time and trouble in pursuing the complaint, I asked the Council to consider a payment to Mrs Smith of £300 which could be offset against her outstanding council tax arrears. I am pleased that the Council has agreed to this remedy.
55. I have also urged Mrs Smith to enter into a reliable regular payment arrangement with the Council to avoid future action, such as an attachment of earnings either through her or her partner.

Dr Jane Martin
Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB

10 July 2012