

13 February 2018

Complaint reference:
17 009 561

Complaint against:
Watford Borough Council

The Ombudsman's final decision

Summary: The Council failed to put recovery of business rates collection on hold while it awaited a decision by the Valuation Office Agency. The Council wrongly issued a final notice for non-payment of council tax. This led to avoidable distress, time and trouble for Mr B. The Council will apologise, pay £350.00 and review procedures.

The complaint

1. The complainant, who I will call Mr B says, the Council took recovery action for business rates when it knew the property was converting to residential. Mr B paid the outstanding amount on a credit card to avoid the threat of bankruptcy; he has incurred interest charges as a result. It then took around a year from July 2016 to June 2017 for the Council to refund money owing to Mr B; there has been no explanation for this delay. Mr B is concerned that the Council and the Valuation Office Agency do not work collaboratively and both blame the other.

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. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
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(i), as amended*)

How I considered this complaint

4. I considered:
 - Information provided by Mr B, and discussed the complaint with him.
 - Information provided by the Council in response to my enquiries.
5. I shared a draft of this statement and considered the Council's response; Mr B did not respond.

What I found

6. In September 2015 Mr B bought an empty business property to convert it to residential.
7. National Non-Domestic Rates (Business rates) are a tax charged on most non-domestic properties. Business rates are worked out on the property's 'rateable value' which is decided by the Valuation Office Agency (VOA).
8. Mr B applied to the VOA to remove the building from its business rates list as he was converting it to residential. Once a residential property it would no longer be liable for business rates, but would need to be listed with the VOA for council tax. The VOA would determine what council tax band the property is and therefore how much Mr B would have to pay for council tax.
9. Councils have a duty to collect business rates and council tax. While someone is applying to the VOA to alter either of these a council would usually continue to bill. The individual would usually be liable to pay until a decision is made by the VOA. A council would then refund any amounts overpaid.
10. On 21 September 2015, the Council wrote to Mr B setting out his business rates liability for that financial year; the first payment was due on 1 November 2015. Mr B did not pay, so the Council followed process and sent a reminder and a final reminder. Mr B did not pay, so the Court issued a summons.
11. The case went to Court in February 2016; the Court adjourned until April 2016. Mr B chose to pay the amount rather than await the April hearing. Mr B says this is because a Council officer put pressure on him; there is no evidence of this and the officer has since left the Council's employment. Mr B paid the full amount on his credit card.
12. The VOA then made its decision and told the Council to remove the property from the business rates list with effect from 16 February 2016. The Council refunded Mr B in June 2016.
13. In November 2016 Mr B contacted the Council asking why he only received a part refund. The Council explained this was due to the date the VOA gave, February 2016. So, Mr B was still liable for business rates from September 2015 to February 2016. Mr B wrote to the VOA. It was not until June 2017 that the VOA decided to zero rate the property from 20 September 2015. The Council refunded the remaining money shortly after in July 2017.
14. In October 2016, the Council wrote to Mr B advising his property was yet to be banded by the VOA for council tax. It advised the average band was band D and gave details should he wish to make payments in the interim.
15. In November 2016, the VOA valued the property in band B, effective from 29 February 2016. The Council issued a council tax bill to Mr B the next day.
16. Mr B overpaid his council tax because of earlier advice he would likely be band D, and because he later applied for a single person discount. It was Mr B's responsibility to amend the standing order with his bank to reduce his payments. The Council refunded any overpayment in August 2017 when Mr B brought the issues to its attention.
17. Mr B involved the local Mayor in August 2017 as he received a final notice from the Council about unpaid council tax. The Council apologised for the error in sending the final notice, and confirmed Mr B's council tax account was paid for the year and his overpayment would be refunded the next day.

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18. On 11 September 2017, the Council said that on reflection the enforcement action should have been withdrawn. The Council refunded Mr B the £100 court costs.
 19. Mr B says this does not cover all of his costs, but has not provided evidence to the Ombudsman of his costs as a result of the recovery action.

Was there fault causing injustice?

20. It was the VOA's responsibility to decide on the removal of the property from the business rates list and to band it for council tax. Any delays by the VOA are outside of the Ombudsman's jurisdiction. Although the Council has a duty to collect business rates and council tax, in a case like this it would be sensible to put collection on hold until the VOA's decision, as if the VOA nil rate the property a refund would be due. The Council has accepted it should have put the recovery action on hold in this case. The Council has refunded the £100.00 Court costs, which is appropriate.
21. Had the Council put the recovery action on hold, as it says it should have done, Mr B would not have had the stress, time and trouble of going to Court and would not have made a lump sum payment of over £3000.00. Mr B was without that money for over a year whilst the VOA made its decision. Mr B has had the avoidable time, trouble and stress of pursuing a complaint.
22. The Council added to Mr B's stress by sending a final notice for council tax in error.
23. Mr B says he had to make the lump sum payment on a credit card and has had associated interest fees. Mr B has provided no evidence in support, so the Ombudsman has not considered this a financial injustice.
24. The Council accepts there could be better working between the Council and the VOA. The Council met with the VOA and went through concerns. The Council now has direct access to certain named VOA officers to help improve working relations. If the Council received a similar case to this in future it would contact the named VOA officers to ask to fast track the case, though the Council can provide no guarantees. I commend the Council for recognising there is a problem, and taking steps to try and resolve future problems.

Agreed action

25. To acknowledge the avoidable distress, time and trouble caused by the Council's actions, the Council will:
 - a) Apologise to Mr B and pay £350.00 within two weeks of the Ombudsman's final decision.
 - b) Consider the Council's approach to similar cases, based on it saying on reflection the recovery action should have been withdrawn in this case. The Council should reach a clear view in what instances it should put recovery action on hold, and cascade this to relevant staff. This should be completed within three months of the Ombudsman's final decision.
26. The Council should evidence to the Ombudsman it has complied with the above recommendations within three months of the Ombudsman's final decision.

Final decision

27. I have closed the case on the basis the recommended action is sufficient to acknowledge the impact on Mr B from the Council's action, and prevent future problems.

Investigator's decision on behalf of the Ombudsman