

# Further report

on an investigation into  
complaint no 07B10432 against  
Manchester City Council

29 March 2011

1. In September 2009 my predecessor issued a report on a complaint by Mr Joseph. He complained about the actions of the Council in making him bankrupt for non-payment of council tax on 6 February 2007. He complained that he should not have been made bankrupt as he did not owe a debt dating from 2002-3, which formed a substantial part of the bankruptcy debt. He also complained that he did not know about the bankruptcy at the time and only found out subsequently.
2. Mr Joseph's debt to the Council was £1,071. He had no other creditors. He maintained that he did not owe debts from financial years 2001-2 and 2002-3 as he had been paying council tax at that time. But he could not produce receipts to confirm this, either to my investigator or to the Council.
3. The Council passed the account to bailiffs, but they returned the debt to the Council as they had been unable to gain access to Mr Joseph's home and considered that the goods he had were of insufficient value to meet the debt.
4. In June 2005 Mr Joseph entered into a payment arrangement of £80 per month with the Council. He maintained this until December 2005. On 27 January 2006 the Council sent Mr Joseph a letter to say that it would instruct solicitors to commence bankruptcy proceedings against him. To avoid this he should pay the amount outstanding within one month. Mr Joseph says that he does not recall receiving this letter.
5. The Council posted a statutory demand through Mr Joseph's letterbox in May 2006. He says he does not recollect receiving this.
6. On 20 December 2006 Mr Joseph was served with a bankruptcy petition by post. The courts gave permission for this when two attempts to serve a petition in person failed. Mr Joseph says he was unaware of the bankruptcy until after the order was made in February 2007.
7. In November 2007 Mr Joseph's son provided the funds for Mr Joseph to pay the trustee in bankruptcy the sum owed to the Council and the outstanding costs to have his bankruptcy annulled, a total of £18,405. In December 2007 the Council received the sum it was owed and in May 2008 the courts annulled Mr Joseph's bankruptcy.
8. My predecessor decided that it was not within his jurisdiction to say whether Mr Joseph owed the debt for which the Council pursued him. The Council obtained liability orders in the magistrates' court in respect of sums of unpaid council tax and Mr Joseph had the opportunity to challenge these liability orders in the courts.
9. My predecessor considered the Council's warning letter of 27 January 2006 to be deficient, and the lack of further contact from the Council until May 2006 to be maladministration, but found, on the balance of probabilities, that Mr Joseph received the letter in question and had a reasonable opportunity to take action to

protect his interests. He therefore decided that he did not accept Mr Joseph's account that he did not receive any warning of potential bankruptcy.

10. My predecessor found the Council to be at fault in that it did not have a written policy for use by officers when considering council tax recovery action. In the absence of such a policy the Council could not produce an audit trail to show how it considered alternative methods of recovering the debt. In particular he highlighted the possibility of recovering the debt by way of an attachment of earnings against Mrs Joseph, who was jointly and severally liable for the debt. He found that, given the possibility of recovering the debt in this way, the Council did not need to resort to bankruptcy proceedings.
11. He also considered that the Council's procedures for warning Mr Joseph of the possibility of bankruptcy were deficient.
12. He did not recommend that the Council should compensate Mr Joseph by repaying him the cost of annulling the bankruptcy. While communications from the Council did not give Mr Joseph every opportunity to consider his position, he found that Mr Joseph had opportunities to take advice about his position, as he had done in the past, and that he could have made representations to the Council at an earlier stage. In his view, Mr Joseph could have borrowed sufficient money to pay off the debt, or reduce it below the threshold for bankruptcy, before the matter reached court. He took this view because Mr Joseph subsequently raised a much larger sum to meet the costs of annulling the bankruptcy.
13. My predecessor therefore found that the injustice to Mr Joseph was limited to the loss of the opportunity to consider his position properly in January 2006, and the outrage that the Council missed an opportunity to put a different recovery process in place. He recommended that the Council should pay Mr Joseph compensation of £1000 to reflect this and that the Council should make revisions to the guidance it subsequently introduced for officers.
14. In response to my predecessor's report, the Council has revised its guidance in the way he recommended. However, it has refused to pay Mr Joseph compensation. The Council considers that Mr Joseph had sufficient warning to pay off the debt before it took bankruptcy proceedings through the courts. It also says that, as a matter of principle, it is opposed to paying compensation to those who have not paid their council tax. It believes that this would send out the wrong message to both persistent non-payers and to those who do pay council tax despite personal difficulties.
15. I have given careful consideration to the point the Council is making. However, my predecessor recommended payment of compensation to remedy the injustice caused by the maladministration he identified. I consider this to be a separate matter from the issue of non-payment of council tax. The Local Government Act 1974 provides that if the Ombudsman is not satisfied with the Council's response to recommendations a further report shall be issued. I have therefore issued this

further report on Mr Joseph's complaint and call on the Council to reconsider its position and make the payment of compensation recommended.

**Dr Jane Martin  
Local Government Ombudsman  
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Westwood Business Park  
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CV4 8JB**

**29 March 2011**

# Report

on an investigation into  
complaint no 07/B/10432 against  
Manchester City Council

**22 September 2009**

# Investigation into Complaint No 07/B/10432

## Against Manchester City Council

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### Key to names used

Mr Joseph

the complainant

## **Report Summary**

### **Subject**

Mr Joseph complains about the actions of Manchester City Council in making him bankrupt for non-payment of council tax in February 2007. Mr Joseph contests that he did not owe the debt the Council was seeking to recover and nor was he made aware of the bankruptcy process.

While the Ombudsman has decided that the first of these matters is outside his jurisdiction to consider and the second cannot be substantiated on the facts, he has nonetheless found significant failings in the administrative actions taken by the Council in pursuing bankruptcy. First, it did not have any written procedure in place to consider whether bankruptcy was appropriate in this case. Second, it failed to adequately consider the alternative of an attachment of earnings which could have been applied to Mrs Joseph's wages. Third, it failed to give Mr Joseph sufficient warning of the potential consequence of its intentions to commence bankruptcy proceedings from January 2006 onwards.

### **Finding**

Maladministration causing injustice

### **Recommended remedy**

That the Council should pay £1,000 compensation to Mr Joseph in recognition of the injustice caused by its failings in this case.

The Ombudsman also recommends some further changes to its current bankruptcy collection procedures, which are under review.



## Introduction

1. Mr Joseph complains about the actions of Manchester City Council in making him bankrupt for non-payment of council tax on 6 February 2007. Mr Joseph says that he should not have been made bankrupt as he did not owe a debt owing for 2002/03 which formed a substantial part of the bankruptcy debt, understanding this to have been paid some years previously. He also says that he did not know about the bankruptcy at the time and only found out subsequently.
2. The Council says that it explained to Mr Joseph the reasons why he owed the debt for which it made him bankrupt and gave him opportunities to pay. It also says that it followed due process during the bankruptcy proceedings.
3. During the course of this investigation one of my investigators has met with and interviewed Mr Joseph. He has also inspected the Council's files and computerised records concerning its dealings with him. My investigator also interviewed officers of the Council who have been involved in the matters complained about, including the Court Officer who took the decision to initiate bankruptcy proceedings against Mr Joseph and the Council's Revenues Manager with overall responsibility for policy in this area. Both the Council and Mr Joseph have been given the opportunity to comment on a draft of this report and my initial conclusions.
4. For legal reasons<sup>1</sup> the names of those mentioned in this report are not their real names.

## Legal and Administrative Background

### My Jurisdiction

5. There are a number of sections of the Local Government Act 1974, (the Act) which defines my powers, which have to be considered in reaching a decision on Mr Joseph's complaint.
6. First, the Act says that I cannot conduct any investigation into:
  - "the commencement or conduct of civil or criminal proceedings in any court of law".<sup>2</sup>

However, I retain jurisdiction to investigate administrative actions prior to the issue of court proceedings and, where the Council instructs agents for enforcement of court orders, the actions of those agents (unless they are agents of the Court).

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1 Local Government Act 1974 section 30(3).

2 Local Government Act 1974, Schedule 5

7. Second, the Act also says that, usually, I should not investigate a complaint where the complainant has had the right to pursue their complaint via the alternative remedy of appeal to the Courts.<sup>3</sup> However, this is at my discretion and I can investigate where I am satisfied that it was not reasonable to expect the complainant to use those rights.
8. Third, the Act says that normally I should not investigate a complaint unless it was made to me, or to an elected councillor, within 12 months from the day when the complainant first knew something had happened that affected him or her.<sup>4</sup> However, this is a discretionary bar and I can investigate where I am satisfied that there are special reasons to accept a complaint about matters the complainant has been aware of for a longer period.

### **Council Tax Liability and Council Tax Benefit**

9. Council tax is payable by most people who occupy their own home. Where a couple are married they are both liable to pay council tax, except in a few limited circumstances which are not relevant to this report.
10. Council tax benefit is a national welfare benefit administered by local authorities. The scheme provides assistance for people on low incomes to pay their council tax. Entitlement to benefit is subject to the law<sup>5</sup> and regulations.<sup>6</sup> Where benefit is payable it is usually paid direct to a claimant's council tax account.
11. Any entitlement to council tax benefit will depend on a number of factors including when a claim is made, the composition of the household and the claimant's income and capital. If the claimant is in receipt of income support or income based Job Seeker's Allowance, then they will usually be entitled to have their council tax payments met in full by council tax benefit. But, if a claimant is not in receipt of income support then eligibility to council tax benefit will depend on comparing their income with a notional income figure for the minimum needs of their household, known as the "applicable amount". Where a person is disabled the applicable amount is usually higher to take account of those needs. Where income exceeds the applicable amount, then a tapering calculation applies which means that a claimant may still get some help towards their council tax, but may not have these commitments met in full.

### **Council powers to collect unpaid council tax**

12. Where a sum of council tax is unpaid, the Council can seek an order from the Magistrates Court, known as a liability order, in order to pursue recovery of the outstanding amount. Once the Council has obtained a liability order against a

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3 Local Government Act 1974, Section 26 (6) (c)

4 Local Government Act 1974, Section 26B

5 Principally the 1992 Social Security Contributions and Benefit Act (as amended).

6 Principally SI 1987 No. 1971 the Housing Benefit (General) Regulations (HBR) & SI 1992 No. 1814 the Council Tax Benefit (General) Regulations (CTBR).

debtor it has a number of options available to try to secure payment of its debt. The Courts have held that recovery action for a council tax debt is not unlawful if it becomes punitive as a result of the debtor's failure to pay.<sup>7</sup>

### ***The use of bailiffs***

13. Bailiffs can be instructed to collect outstanding debt, if necessary through securing a levy against certain goods that might be owned by the debtor. However, in most circumstances a bailiff cannot take such a levy unless they have gained peaceful entry into a debtor's home or premises.

### ***An attachment of benefit***

14. Another method of recovering council tax for local authorities is to apply for a deduction from ongoing benefit to the Department for Work and Pensions. However, this can only be done where a debtor is in receipt of income support or (income based) Job Seekers Allowance.

### ***Attachment of Earnings***

15. The Council can also require a debtor's employer to deduct a sum of money from a debtor's wages. Such deductions cannot be made if the employee earns less than £220 per month in net wages. There is a sliding scale of deductions from earnings with the percentage deduction increasing as the weekly or monthly earnings increase. Prior to 31 March 2007, anyone earning between £100 and £135 a week in net wages, could have 5% of those wages taken by way of an attachment of earnings. There is no right of appeal for a debtor where the Council applies such a sanction.

### ***Committal hearing***

16. If the Council has attempted, but failed, to collect a debt through the use of bailiffs then it can request that the debtor appear before the Magistrates Court to consider if they should be committed to prison for "wilful refusal" or "culpable neglect" in the non-payment of their council tax. Magistrates must conduct a means enquiry to establish the reason for non-payment. They are given options including committing the debtor to prison, suspending any committal on terms (such as ordering a fresh payment arrangement) or remitting some of the debt (i.e. writing it off).<sup>8</sup>

### ***Bankruptcy***

17. Bankruptcy can be used as a means to try and recover a debt where a creditor is owed at least £750. With council tax debts, if a local authority chooses to use

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7 R v Cannock Justices ex parte Ireland (1995)

8 Council Tax (Administration and Enforcement) Regulations 1992, 47 & 48

bankruptcy as a means of recovery then it must first obtain a liability order, for any sums it is owed.<sup>9</sup> In addition, under the 1986 Insolvency Act rules that govern bankruptcy proceedings the creditor must also serve a document known as a statutory demand. This should explain the debt the Council is seeking to recover.

18. A debtor can ask the County Court to set aside a statutory demand on the basis that the debt is not owed. The local authority should set out a full history of an account showing debits and credits and prove the existence of liability orders to the satisfaction of the Courts<sup>10</sup>.
19. If a statutory demand is served and the debt remains unpaid after a further 21 days (or no arrangement has been made to the satisfaction of the creditor), then a bankruptcy petition can be served. In effect, the petition requests that the County Court (or High Court in London) make an order that the debtor be declared bankrupt. A debtor may try to oppose the making of a bankruptcy order on the grounds that the debt is not owed, and the Courts have the power to stay proceedings if it appears likely that the debt may be settled in a short period of time. However, an adjournment on the basis that a debtor has offered to settle their debts can only be allowed, if the offer is such that no reasonable creditor would refuse it.
20. Where a bankruptcy order is made, the Official Receiver initially considers the circumstances of the debtor to ascertain what debts are owed and whether the debtor has assets that might be used to pay off the debts. Where a debtor has assets that might be sold to settle a debt, a licensed insolvency practitioner will usually be appointed to act as trustee to safeguard and secure the assets of the debtor for the benefit of creditors generally.
21. The Government does not issue any guidance to Councils on the pursuance of council tax arrears using petitions for bankruptcy. In a written response to a parliamentary question in July 2007, the Government said that it was “up to each billing authority to consider how best to use these powers in the interests of all taxpayers who do pay their bills” and that “it had no plans” to issue such guidance.
22. In March 2000 the Court of Appeal held that as bankruptcy was a procedure allowed by statute and regulations, there could be no objection in principle to a Council using those proceedings to collect an outstanding debt which it had a duty to collect.<sup>11</sup>

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**9 Council Tax (Administration and Enforcement) Regulations 1992, 49(1)**

**10 see Lambeth v Simon (2007) BPIR 1629**

**11 Griffin v Wakefield Metropolitan District Council Court of Appeal (2000)**

## **Charging Orders**

23. Another method of collection available to a Council is to seek a charging order against a debtor.<sup>12</sup> This is a way of securing a debt through the County Court against a debtor's property, so that in the event that the property is sold, the creditor must be paid from the proceeds of sale. For a Council to be able to pursue this course of action it must hold a liability order against the debtor and the debtor must owe at least £1000. The Courts can consider suspending a Charging Order on repayment terms. Where a creditor holds an outright Charging Order or any payment terms are not adhered to, then the creditor can seek an Order for Sale through the Courts. This too, can be suspended at the Court's discretion; for example on the basis of an order that regular repayments are made.

## **Manchester City Council policy on bankruptcy**

24. The Council's policy on using bankruptcy to collect unpaid local taxation debts was formulated following intervention by the Office of the Deputy Prime Minister (ODPM) in 2004. The ODPM invited the Council to attend a workshop organised for the twenty Councils in England with the worst rates of council tax collection. Subsequent to the workshop the ODPM asked the Council to report back and outline what changes would be made to ensure collection performance improved.
25. As a consequence of the above, the Council's City Treasurer commissioned an internal report to see how the ODPM's expectations could be met. He received this report in January 2005. The report identified that the Council's collection rate, at around 90%, was the third lowest nationally. It recommended that the Council move away from a "rigid" collection policy of using only bailiffs which if unsuccessful was followed by committal proceedings for those council tax payers who had defaulted. It identified that many Councils were moving away from committal due to most magistrates being unwilling to imprison council tax defaulters for non-payment. Instead there was a "major growth in the use of charging orders and personal bankruptcies". The report said other Councils found this a successful method to recover debt, particularly in cases where council tax payers had "low income/limited access to funds but had large equity in a property".
26. Amongst other things therefore, the report recommended:
- increasing the use of charging orders and bankruptcies;
  - introducing a pre-warning bankruptcy letter;
  - publicising the use of bankruptcy by the Council;
  - reducing the number of cases going to committal proceedings;

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12 Council Tax (Administration and Enforcement) Regulations 1992, 50 and 51

- changing the “post bailiff action letter” to advise customers that their case would be considered for either committal or bankruptcy proceedings.
27. The report recommended that if a council tax payer wished to avoid bankruptcy after the service of “the pre-warning bankruptcy letter”, the “debt should be cleared within three months”. At which point the case would be passed to agents to commence bankruptcy proceedings on behalf of the Council.
  28. With regard to charging orders, the report recommended the Council look at each case on its merits when the debtors “personal and financial circumstances” were known. Commenting on a draft of this report the Council has said that a Charging Order “of itself, does not encourage the debtor to repay the debt due, it requires the authority to spend further time and money in enforcement post the Order and will not be applicable to properties which have no equity”.
  29. The Council has explained that the report formed the basis for ongoing collection policy and subsequently Officers received training on bankruptcy procedures. However, no written policy was drawn up to clarify when the Council would use this recovery option.
  30. The Council’s Revenues Manager has advised that since the Council began using bankruptcy as a method to collect its debts over 1,500 Statutory Demands have been issued. It is understood that in approximately 450 cases, the Council has gone on to obtain a bankruptcy order. The Revenues Manager says that bankruptcy is not usually considered in cases where the total debt owed is less than £1000 and the usual average arrears are understood to be around £2000.

## Investigation

31. Mr Joseph was declared bankrupt on 6 February 2007. His debt to the Council for non-payment of council tax was £1,071. He had no other creditors. The arrears of council tax related to the following financial years:

2001/02	£65.01
2002/03	£556.82
2003/04	£45.70
2004/05	£177.66
2005/06	£226.45

32. Mr Joseph disputes these arrears. In particular, he disputes whether he owed the debts attributed to the financial years 2001/02 and 2002/03. He initially complained to me about these matters in June 2007 and after allowing the

Council an opportunity to investigate the complaint, I commenced my investigation in November 2007.

33. In order to understand how these arrears accrued, my investigator has considered the Council's records going back to October 2001. Mr Joseph is a married man and as such is jointly liable to pay council tax along with Mrs Joseph. At the beginning of events covered by this complaint (the financial year 2001/02) Mr and Mrs Joseph had one dependent son and their home was rented from the Council. Until October 2001 Mr and Mrs Joseph were in receipt of income support, which supplemented incapacity benefit paid to Mr Joseph. In October 2001, Mrs Joseph commenced part-time employment and has been continuously employed in a part-time capacity since this time. Mr Joseph has continued to receive incapacity benefit. Mr and Mrs Joseph's son ceased to be a dependent in September 2003 when he moved away.
34. As a result of receiving income support, Mr and Mrs Joseph were receiving full council tax benefit at the beginning of the 2001/02 tax year. But they ceased to be entitled to this benefit when Mrs Joseph began part-time work. The Council suspended Mr and Mrs Joseph's council tax benefit on 28 April 2002 when it learnt of Mrs Joseph's part-time employment (it says that Mrs Joseph did not advise it that she had commenced such employment at the time). Subsequently, the Council decided that Mr and Mrs Joseph were not entitled to the council tax benefit they had received between October 2001 and April 2002. However, in January 2004, the Council revised its decision, accepting that Mr and Mrs Joseph still had an underlying entitlement to council tax benefit for this period, given Mrs Joseph's low earnings, albeit less than the maximum award. Further adjustment followed in March 2004, to take account of Mr and Mrs Joseph's son leaving home in September 2003.
35. The Council's decisions to revisit Mr and Mrs Joseph's entitlement to council tax benefit for the financial years in question began after it had initiated recovery of the debts owing on these accounts. The Council had obtained a liability order for sums then owing on both accounts in September 2002 and passed the debts to bailiffs to attempt collection in February 2003.
36. Mr Joseph's contention that money was not owed for the two financial years in question rests upon two arguments. First, he says that he has receipts to prove he was paying his council tax in this time despite the Council having no record of him making a payment in either financial year. My investigator asked to see the receipts Mr Joseph has referred to. My investigator has seen receipts that show Mr Joseph making payments towards his council tax account from April 2003 onwards. However, my investigator has seen no receipts that confirm payments prior to April 2003.
37. Mr Joseph also says that letters he received from the Council and a local Law Centre during the 2003/04 financial years demonstrate that no debt was owed for the preceding financial years. When the overpayment of council tax benefit

arising from Mrs Joseph starting work first came to light, Mr Joseph approached a local Law Centre for assistance. It was as a result of the Law Centre's assistance that Mr and Mrs Joseph's benefit entitlement was reassessed. The Law Centre wrote to Mr Joseph on 2 December 2003 saying that having recalculated his benefit entitlement for the year 2001/02, the Council had made a payment of £226.46, which would be credited to his 2003/04 council tax account. The Law Centre added "I do not think you are owed any more council tax benefit".

38. On 21 January 2004 the Council wrote to Mr Joseph saying he would have to pay a reduced overpayment of £75.67 for the 2001/02 financial year; but that he would not have to repay a council tax benefit overpayment of £67.24 incurred between 1 April 2002 and 5 May 2002.
39. On 24 March 2004 the Council then wrote to Mr Joseph again to explain adjustments made to take account of his son turning 18. The Council said this had resulted in an overpayment of council tax benefit of £67.51 for the 2003/04 financial year. However, having reassessed his benefit entitlement the Council had now decided that Mr and Mrs Joseph had also been underpaid council tax benefit of £179.21 for the same period. This meant a net payment of £111.70 would be credited to Mr and Mrs Joseph's council tax account. In neither of the letters referred to above did the Council explain what sums were outstanding on the accounts further to the adjustments. However, neither did they indicate that the accounts were cleared and commenting on a draft of this report the Council says that on each occasion there was a change in council tax benefit, a new bill would have been issued to Mr Joseph. Consequently, he should have been aware from April 2004 onwards, what he was expected to pay.
40. In July 2004, Mr and Mrs Joseph purchased their house from the Council. Prior to this date, Mr Joseph had written to the Council further to its letter of 24 March, querying the amount of council tax he owed and the rate of council tax benefit the couple were receiving. And in January 2005 the Council made a fresh decision on Mr and Mrs Joseph's entitlement to council tax benefit.
41. As a consequence of the above, Mr Joseph received a revised council tax bill in February 2005. On 12 February 2005, he then wrote to the Council to query why this bill showed amounts owing for the 2001/02 and 2004/05 financial years. His letter said that he thought any outstanding bill "had been sorted out" but that the Council had not "taken off my account from the computer". He said that he understood any debt related to the year 2001/02 had been "sorted out" following the involvement of the Law Centre.
42. On 16 February 2005 the Council wrote back to Mr Joseph advising that he still owed £846.74 in outstanding council tax for the financial years 2001/02 and 2002/03. The letter said this consisted of the charge of £701.20 plus arrears from the previous year £302.13 and costs of £50 (making £1053.33) minus benefit of £206.59. The letter went on to explain that the "underlying benefit" for the

2001/02 account of £226.46 had been paid on to the 2003/04 account. But notwithstanding this payment, further benefit of £71.53 and payments by Mr Joseph of £308.00, he still owed £131.22 on this account also, which had been carried forward on to his 2004/05 account. The letter advised Mr Joseph to contact the Council's bailiffs to make payments of this amount.

43. On 21 February 2005 Mr Joseph wrote back to the Council again saying he "did not accept" the £846.74 amount was owed. He said he had paid "all my council tax for the previous year".
44. The Council replied on 24 February 2005 saying that having checked its records, "no payment whatsoever" had been received from Mr Joseph for the 2002/03 financial year. The Council invited Mr Joseph to send any proof payments were made in this time, if this was not the case. It also put collection by its bailiffs on hold for a month to enable Mr Joseph to forward such information.
45. On 21 March 2005 Mr Joseph wrote to the Council again "concerning the £64.07 to be paid on the council tax bill 2004 to 2005". He said he had paid this bill. And on 22 March 2005 Mr Joseph wrote again to the Council this time in respect of the amount that was owing on the 2002/03 account. He said he still disputed the debt and wanted it considered by "an independent appeal panel" but that he would pay £20 per month towards it, which is what he could afford.
46. The bailiffs returned the outstanding debt on the 2001/02 and 2002/03 accounts to the Council, on 31 March 2005. They had not gained entry to Mr Joseph's home and considered he had goods of insufficient value to meet the debt that was owed.
47. On 16 April 2005 the Council wrote to Mr Joseph "in response to your letter regarding your outstanding council tax accounts". This referred back to the letter of 24 February 2005 and invited Mr Joseph to submit any receipts he had detailing payments he did not believe had been credited to his council tax account.
48. On 7 May 2005 Mr Joseph wrote to the Council. He said he could not afford to pay more than £20 per month and "this is what I have been doing". From 1 April 2005, Mr and Mrs Joseph were advised they were no longer entitled to council tax benefit as their income was too high to qualify (Mrs Joseph's earnings were calculated to be £134 a week). Mr Joseph queried this and the Council explained its council tax benefit decision in more detail in a letter of 2 June 2005.
49. On 22 June 2005 the Council sent Mr Joseph a "final warning letter" (this is confirmed by its computerised records). While a copy of the letter is not on the Council's files, it is understood that the letter would have threatened Mr Joseph with committal proceedings, to reflect then Council policy, in the event he did not clear his arrears.

50. On or around 24 June 2005, Mr Joseph entered into a payment arrangement with the Council. He agreed to start paying his council tax arrears at a rate of £80 per month. Between 30 June and 7 December 2005 Mr Joseph made regular payments, generally £20 per week. On 24 June 2005 the Council obtained a Liability Order, inclusive of costs, for £714.90 for the 2005/06 financial year. The Council applied payments made by Mr Joseph to the 2005/06 account in the first instance. The bill issued for the 2005-06 financial year included arrears of £64.07 from the previous financial year. Mr Joseph's payments reduced the total owing on the 2005/06 account to £226.45 by 11 January 2006. Commenting on a draft of this report the Council says that this payment arrangement was for the financial year 2005/06 only. It says that the recovery of the remainder of Mr Joseph's debts was a matter for a different, senior recovery officer. A delay in the introduction of a new computer system meant that Mr Joseph was not contacted about his pre 2005/06 council tax arrears between 22 June 2005 and 27 January 2006.
51. After 7 December 2005, Mr Joseph stopped making instalment payments, save for a payment of £10 on 11 January 2006. On the same day, the Council's computer system had identified his case as one where a payment arrangement had been "returned" and as a consequence on 27 January 2006 the Council wrote to Mr Joseph. The first line of the letter said "**this letter contains important information about bankruptcy proceedings against you**, please read it carefully" (emphasis as per original). The letter said Mr Joseph owed £1071.64 arrears in total. It also said that the Council would be instructing solicitors to commence bankruptcy proceedings against him. It said that he must pay the full amount by 28 February 2006 to avoid this action. Mr Joseph has told my investigator he has no recollection of receiving this letter.
52. My investigator has interviewed the Council's Court Officer who took the decision to initiate bankruptcy proceedings against Mr Joseph in January 2006. He explained that the Council receives approximately 2,000 referrals a year from bailiffs who have been unable to collect debts owing to the Council. Of these, the Officer said that he would usually consider bankruptcy in around 10-15 cases a month dependent on a number of factors. These included contact with the debtor, whether it was possible to obtain an attachment to wages or benefit, whether any outstanding benefit might reduce the debt and whether credit searches established the presence of assets that might be sold to meet the debt. The Officer explained that part-time earnings were usually insufficient to generate an attachment of earnings. Commenting on a draft of this report the Council has said that an attachment of earnings in this case would have brought in around £23 per month to put towards Mr and Mrs Joseph's arrears.
53. The Officer explained that Charging Orders and Committal were considered as alternatives but were not usually pursued as they were ineffective as a means to recover a debt. A Charging Order was not necessarily effective in securing

payment and the Council would have to return to Court if the debt was not paid. The Council's Revenues Manager also made this point to my investigator.

54. The Officer explained that he had discretion to refer any case to Senior Managers for advice. For example, this might include a case where a debtor was known to have mental health problems. No advice was sought in this case as it was considered to be straightforward and Mr Joseph had made no contact after the warning letter was sent in January 2006.
55. The Council uses agents (a specialist law firm who use qualified process servers) to serve statutory demands and take bankruptcy proceedings through the Courts. The agent is understood to have served a statutory demand on Mr Joseph on 3 May 2006, posting the demand by hand through his letterbox. Mr Joseph has told my investigator that he has no recollection of receiving this. The Council has advised that its agents have a policy of including with the statutory demand a booklet that explains some of the consequences of bankruptcy, which is published by the Insolvency Service (a Government agency).
56. Commenting on a draft of this report the Council has said that "in order to effect postal service [of a statutory demand] the Council would first have to attempt personal service and then, if that failed, inform the debtor of a time when they would attend again for a second attempt or ask him to contact them to arrange service. The Council, through its agents, would also explain that if [Mr Joseph] did not reply to the letter they would effect postal service and if a bankruptcy petition was issued the Court would be asked to deem that service had taken place. It is simply not credible that Mr Joseph does not remember this process. The very fact that the Court allowed this method of service demonstrates that they accepted Mr Joseph was deliberately avoiding personal service".
57. On 20 December 2006 Mr Joseph was served with a bankruptcy petition by post. The Courts gave permission for this form of service when two attempts to serve a petition in person had failed. Mr Joseph has told my investigator he was unaware of the bankruptcy until after an order was made.
58. On 6 February 2007 the Court declared Mr Joseph bankrupt. He did not appear at the hearing scheduled to consider the bankruptcy petition served by the Council. A licensed Insolvency Practitioner was then appointed to act as Trustee in the bankruptcy. Commenting on a draft of this report the Council has said that it has contacted the Official Receiver who advised that Mr Joseph failed to attend two meetings arranged to discuss his bankruptcy. The Official Receiver appointed a trustee in this case in June 2007.
59. In March 2007 Mr Joseph contacted the Council to complain he had been made bankrupt in error. Between March and September 2007 the Council entered into correspondence with Mr Joseph where it explained that it was satisfied it had properly accounted for all sums of council tax paid by him. It says that it put

Mr Joseph in touch with a local Citizens Advice Bureau who set up a meeting between Mr Joseph and the Official Receiver in October 2007.

60. A fresh claim for council tax benefit was made by Mr and Mrs Joseph on 3 May 2007. With the application Mrs Joseph submitted wage slips showing that she received net payment of between £540 and £590 per calendar month.
61. In November 2007, using funds given by his son, Mr Joseph paid the trustee the sum owing to the Council and outstanding costs in order to have his bankruptcy annulled. These totalled £18,405. On 6 December 2007 the Council received the debt it was owed in bankruptcy, of £1071. Mr Joseph's bankruptcy was subsequently annulled by the Courts in May 2008 on the basis that his debts had been paid in full.
62. In its comments on a draft of this report, the Council has defended its use of bankruptcy as a collection method in general terms saying that it has "resulted in the collection of some of the most difficult outstanding debts [owed to the Council] and that this has made a significant contribution to the overall collection rates for the City, thereby benefiting all council tax payers".
63. While in its general comments on Mr Joseph's complaint, the Council has said that:
  - it is not appropriate for me to investigate some of the events referred to above that are "so far out of time";
  - it was Mr Joseph's choice not to contest the liability orders, statutory demand or bankruptcy petition; but that in each case he had an "alternative remedy" available to him to do so;
  - Mr Joseph should have accepted that he owed a debt at an earlier stage and then bankruptcy would not have been pursued;
  - the Council was not acting "perversely or outside of its discretion" in making Mr Joseph bankrupt and that it was never required to have a written policy for using this method of collection; nor would it be appropriate to consider bankruptcy only as a policy of "last resort";
  - due warnings were given to Mr Joseph as to the Council's intentions;
  - the Council did give "serious consideration" to alternative options before pursuing bankruptcy; in particular that an attachment of earnings would not have recovered any current amount due or arrears;
  - Mr Joseph "took a conscious decision to ignore and avoid the bankruptcy process" and that he would not have acted differently if the Council had a

collection policy in place at the time covered by this complaint or given him further warning of its intentions.

64. Notwithstanding the above the Council has drafted a new collection policy for the recovery of council tax and other debts through the use of bankruptcy and charging orders. This explains the legal requirements when such collection methods can be considered and that the Council will continue to use external solicitors for this work. The draft proposes that bankruptcy should be considered in cases, including the following:

- where the debt exceeds £1500 in most cases;
- where the debtor has sufficient assets or equity to ensure the debt is recoverable;
- where the debtor is not making regular and mutually agreed payments towards arrears that will clear the debt in an “acceptable timescale”;
- where insolvency action is considered “most effective in recovering from a particular debtor”;
- where debt has arisen from fraud.

The draft policy advises that the Council should consider withdrawing proceedings in favour of alternative enforcement action where “a debtor as a result of age, severe mental illness or serious learning difficulties cannot deal with their affairs” or is “currently in receipt of 100% council tax benefit”. The policy recommends that officers check, amongst other things, council tax and benefit records to see if any of these circumstances apply and encourages “warning of bankruptcy” and the issue of the Guide to Bankruptcy” booklet referred to at paragraph 55 above.

65. The draft policy suggests that charging orders should be used in cases where a debtor cannot deal with their financial affairs, where there are practical difficulties pursuing bankruptcy (for example if the debtor lives abroad) or where the debtor volunteers such an arrangement or is in the process of selling their house. In all cases where bankruptcy or a charging order is being considered Officers are now required to complete a pro-forma that provides details of the debts being recovered, checks made as to circumstances (employment details, benefit etc) as well as warnings given.

## **Conclusions**

66. I must first consider the question of my jurisdiction. I am satisfied that I can consider the actions of the Council up to 20 December 2006 when Mr Joseph was served with a bankruptcy petition.

67. I have decided that this is the relevant date for when the “commencement of Court proceedings” began in this case. This is a different approach to that I took in March 2008 when I issued a report against Wolverhampton City Council<sup>13</sup> where I decided that the “commencement” of Court proceedings began with the service of a statutory demand. I have reconsidered my approach because while a debtor may apply for a statutory demand to be set aside by the County Court, such demands are not issued under a process controlled by the Courts. The Courts only become involved at the point at which a debtor applies to set aside a statutory demand or a bankruptcy petition follows. Therefore I consider that I have jurisdiction to investigate the Council’s actions and those of any agents acting upon its behalf, until such time that a bankruptcy petition is served.
68. I am satisfied that it is appropriate for me to exercise my discretion to investigate the decision of the Council taken in January 2006 to use bankruptcy as its chosen recovery method in this case. While I recognise that Mr Joseph did not make any complaint to this office before June 2007, the potential injustice here is severe and that has led me to exercise my discretion to consider events that occurred more than twelve months previous to this date.
69. Turning to the question of “alternative remedy” I accept that Mr Joseph had the “alternative remedy” of appeal to the Courts if he wished to contest that he was not liable for any council tax debt where a liability order was made, for example on the grounds that the debt had been paid and money not allocated to the correct account. For this reason I will not take issue with the Council’s calculation as to the council tax debt owed by Mr Joseph at the time of his bankruptcy. However, I have considered it important to set out the history of Mr Joseph’s dispute over whether the debt was owed in order that both his actions and those of the Council can be considered in context.
70. What is at the crux of the complaint is the Council’s decision to embark on the path of bankruptcy in January 2006. I can understand why, by this date, the Council would want to consider the full range of its collection options to recover Mr Joseph’s debt, noting that by this time the Council had tried but failed to collect the debt through use of bailiffs and that despite making some payments towards his 2005/06 account, Mr Joseph still appeared unwilling to accept that his debt was properly due. While I have some sympathy with the confusion that he must have encountered in trying to understand his council tax position as of March 2004, given the adjustments to his council tax benefit that preceded this date, in subsequent exchanges of correspondence the Council did explain its position. Mr Joseph should have realised that the biggest contributor to the debt was non-payment on his part for the financial year 2002/03, for which he could not provide receipts.

71. I also recognise that any collection policy should reasonably include bankruptcy as a potential option for recovery and I acknowledge what the Council says about how its overall collection rates have improved, to the benefit of all tax payers, since introducing this method of collection.
72. However, I regard it as a fundamental flaw that the Council should have been using this method of collection without a written policy for Officers to refer to in individual cases. While the Council may not have been under a legal requirement to have such a policy, I consider it maladministration for an authority not to have such a policy for the guidance of its staff in such an important area of public administration.
73. I say this because the consequences of bankruptcy can be devastating to the debtor in terms of both the loss of assets and the costs that can multiply the debt many times over. These consequences are such that I consider the Council must consider the appropriateness of such recovery action in each individual case where it is used. A written policy should provide assurance that officers will properly consider the facts of each individual case before putting a chain of events into motion that might be difficult to reverse.
74. I expect therefore that any policy on the use of bankruptcy should contain the following advice to officers;
- to keep in mind the severity of the collection method, so that it is generally only used as a policy of “last resort” when other collection methods have failed and payment arrangements have not been adhered to;
  - to give the debtor due warning as to the potential consequences and costs of bankruptcy before steps are taken to initiate such proceedings; I do not expect to see the consequences of bankruptcy explained when a statutory demand is issued, as by this time the debtor (especially one on state benefits or low wages) may have too little time to make alternative payment arrangements to avoid bankruptcy and the Council, having instructed agents and incurred costs as a result, may be unwilling to accept anything less than full payment of the debt in a short period of time;
  - to weigh in the balance factors that will influence the decision to pursue bankruptcy including the potential availability of other collection methods, the debtor’s payment history and what is known about the debtor’s circumstances including his entitlement to state benefits, any known health (especially mental health) problems, availability of assets etc;
  - to keep a written record of the considerations applied in each individual case.
75. When measured against such benchmarks, I find that the Council’s actions in this case are insufficient to demonstrate that it properly took account of Mr Joseph’s

circumstances, properly considered alternative courses of recovery, or gave adequate due warning before choosing the route of bankruptcy.

76. First, the Council is unable to provide a satisfactory audit trail to show that it properly weighed up whether it had alternative collection methods available to it to secure repayment of Mr Joseph's arrears. In particular, there is nothing to demonstrate that the Council considered the possibility of an attachment of earnings against Mrs Joseph who was jointly liable for the debt. Nor did it record why it considered bankruptcy preferable to other remedies of "last resort" such as a charging order or committal. This was maladministration.
77. Second, Mr Joseph received no adequate warning of the potential consequences and costs of bankruptcy between January 2006 (when the decision to initiate such proceedings was taken) and the service of the statutory demand in May 2006. In this case the sole warning given to Mr Joseph of the Council's intention to use bankruptcy was the letter of 27 January 2006, which gave no information about what bankruptcy might entail. This was maladministration.
78. I have gone on to consider the consequences of the maladministration detailed at paragraphs 72, 76 and 77 above. It seems to me that, as a consequence of the Council failing to adequately consider alternative collection methods bankruptcy need never have been resorted to in this case. Instead, an attachment of earnings order would appear to have offered the Council secure repayment of its debt without using a remedy of last resort.
79. I recognise that the Council does not consider an attachment of earnings would have offered a reasonable rate of return in a reasonable timescale (although based on its assessment of Mrs Joseph's earnings set out in paragraph 48 I think an attachment would have brought it around £29 per month not £23 as stated). I also recognise that the Council would have concerns as to whether Mr and Mrs Joseph would meet their future council tax liability. And I would not want to tie the Council's hands by saying that it **must** impose an attachment of earnings in all cases where it might have recourse to do so.
80. But in this case the debt owed by Mr Joseph was only marginally above the bankruptcy threshold, such an attachment had never been previously attempted and the debtors were known to be living on a combination of state benefits and relatively low-paid work. And while the Council might have had concerns about future payments, it could not assume that Mr Joseph would fall into further arrears given that his intransigence over previous years' arrears appears to have been based upon changes to benefit in those years. I have no evidence that the Council weighed these factors in the balance in preferring bankruptcy to an attachment of earnings. And in the circumstances I consider it was neither just nor proportionate for the Council to resort to bankruptcy proceedings on this occasion.

81. It also seems to me that because Mr Joseph did not receive adequate warning at the time the Council took the decision to pursue bankruptcy as a means of collection, he was not given every opportunity to consider his position as he should have been.
82. However, this does not mean that I accept Mr Joseph's account that he had no warning of the bankruptcy. I do not find it credible that Mr Joseph could have failed to receive the Council's letter of 27 January 2006, been unaware of its agents' attempts to serve him with the statutory demand, failed to receive the statutory demand itself and have had no knowledge of the subsequent bankruptcy petition.
83. I also think that it was possible for Mr Joseph to learn of the consequences of bankruptcy, before an order was made, despite the deficiencies in the Council's letter of 27 January 2006. Because I do not find his version of events credible, I consider it likely that Mr Joseph did indeed receive the Insolvency Service booklet posted with the statutory demand. But even if this somehow went astray, there were other opportunities for Mr Joseph to take advice, as he had previously taken advice about his benefits, and to have made representations to the Council.
84. Had he taken such advice and made such representations then I think it likely that he could have raised the necessary capital either to pay off his debt or reduce it below the bankruptcy threshold before any bankruptcy petition was served or any order made. I reach this conclusion given that he was able to obtain access to considerably larger funds in November 2007 than he would have needed some six months earlier.
85. The starting point for any remedy should be for me to put the complainant in the position that he would have been in, but for the maladministration I have identified. Given that I find that the Council need not have resorted to bankruptcy proceedings in this case and would probably not have done so had due regard been given to the alternatives, I have given serious consideration as to whether it should now retrospectively compensate Mr Joseph for the costs he incurred in having his bankruptcy annulled.
86. But I have decided against this here. This is because I must also take account of what attempts, if any, a complainant has taken to mitigate the injustice the Council's errors may have caused. While I do not consider bankruptcy should have been embarked upon as a course of action in this case, I am satisfied Mr Joseph had sufficient opportunity to halt the process before any order was made.
87. I consider the injustice Mr Joseph has suffered is therefore limited to him not being given the chance to consider his position properly in January 2006, and outrage that the Council missed an opportunity to have a different collection process put in place by that time to recover the council tax arrears. But I do not

consider this outrage can reasonably extend to the costs imposed by the bankruptcy as Mr Joseph had every opportunity to avoid these.

## **Finding**

88. For the reasons given in paragraphs 72, 76 and 77. I find maladministration causing the injustice identified in paragraph 87. To remedy that injustice I recommend that the Council pay £1000 compensation.
89. In addition, while I welcome the procedural changes made so far by the Council with regard to recovery of its debts through bankruptcy, I recommend that it makes further revision to ensure that:
- its Officers be reminded that bankruptcy should, save in exceptional circumstances, be regarded as a remedy of last resort given the costs in both financial and human terms that can result where it is pursued;
  - as part of the consideration as to whether bankruptcy is appropriate in an individual case, Officers should weigh in the balance evidence concerning a debtor's income, including receipt of other state benefits or partial council tax benefit awards;
  - clear timescales are introduced to clarify when adequate warning of bankruptcy should be given and how long it will be before the Council passes the case to its solicitors;
  - Officers are given clear instruction to consider the availability of other collection methods and that checks also be made with the Council's Adult Services Department to ascertain if there is evidence of vulnerability on a case-by-case basis.

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**22 September 2009**