

# Report

on an investigation into  
complaint no 08 002 300 against  
Exeter City Council

4 March 2009

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<b>Table of Contents</b>	<b>Page</b>
<b>Report summary</b>	<b>1</b>
<b>Introduction</b>	<b>3</b>
<b>Legal and administrative background</b>	<b>3</b>
The Ombudsman's jurisdiction	3
Council tax discounts and council tax benefit	4
Recovery of council tax benefit	4
The use of bailiffs	5
An attachment of benefit or earnings	5
Committal hearing	5
Bankruptcy	5
Charging orders	6
Exeter City's policy on bankruptcy and charging orders	7
The Council's Retention and Disposal Policy for maintenance of council tax benefit records	7
The Council's policies and procedures for welfare rights and anti-poverty measures	8
<b>Investigation</b>	<b>8</b>
Pursuit of the debt: October 2000 to December 2002	9
Pursuit of the debt from 2003	11
Enquiries made by the Council's solicitors after service of a statutory demand	12
<b>Conclusions</b>	<b>13</b>
<b>Appendix</b>	<b>18</b>
Breakdown of the council tax debt owed by Miss Byrd	18

## Key to names used

Miss Byrd	Complainant
Mrs Byrd	Complainant's mother
Messrs Parry & Stanford	A firm of solicitors
Officer A	A Revenues Collection Manager

## **Report summary**

### **Local taxation**

The complainant's adult daughter, who suffered from untreated mental and physical health problems, owed the Council a significant sum in arrears of unpaid council tax. The complainant said that her daughter had been incapable of dealing with her own financial affairs or of seeking help to do so during the period in which these arrears had accrued; and that the Council had made her bankrupt without giving proper consideration to her vulnerability.

### **Finding**

Maladministration causing injustice, remedy agreed.

The Ombudsman found that the Council had pursued this debt over a number of years without making adequate enquiries into the debtor's health problems to determine whether this was a suitable course of action, although in 2001 she had told the Council that she was terminally ill. The Ombudsman criticised the Council for failing to have adequate written procedures to include standard checks at an early stage as to whether the debtor's personal circumstances made bankruptcy proceedings inappropriate, for failing to make such enquiries, and for failing to keep a clear written record of the way its decisions were made.

However, the reclusive behaviour of the complainant's daughter, while apparently a function of her mental health problems, would not have helped the Council in making these enquiries and the Ombudsman was not able to say clearly that the Council would not have sought her bankruptcy, even without maladministration. In all the circumstances he was very pleased to note that the Council, as the only creditor in the bankruptcy proceedings, had withdrawn its claim, once it was made aware of the problem.

### **Remedy**

The Council has undertaken unconditionally to pursue an annulment of the Bankruptcy Order, bearing any necessary costs of the bankruptcy itself. These are currently estimated at £10,000. The Ombudsman was happy to regard this offer as a local settlement of the complaint.



## Introduction

1. Mrs Byrd complained on behalf of her daughter, whom she says was wrongly charged council tax, as a result of which she became bankrupt. Although the Council withdrew the original debt and costs, Miss Byrd remains liable for the fees and costs of administering the bankruptcy.
2. During the course of the investigation, the Commission's Investigator has corresponded with the Council, its solicitors and Miss Byrd's Trustee in Bankruptcy. She has been provided with copies of file documents and has carried out interviews with officers of the Council's Revenues Collection and Council Tax Benefits Departments and with the complainant's mother, Mrs Byrd. Miss Byrd has not been well enough to participate in the investigation.
3. For legal reasons<sup>1</sup> the names used in this report are not the real names of the people or the firm of solicitors concerned.

## Legal and administrative background

### The Ombudsman's jurisdiction

4. There are a number of sections of the 1974 Local Government Act, as amended by the Local Government and Public Involvement in Health Act 2007, that define my powers which have to be considered in reaching a decision on Miss Byrd's complaint.
5. 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 (unless those agents are agents of the Court).
6. 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 a statutory tribunal or 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.
7. Third, the Act also 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 again a discretionary power and I can investigate where I am

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<sup>1</sup> Local Government Act 1974, Section 30(3)

<sup>2</sup> *Ibid*, Schedule 5

<sup>3</sup> *Ibid*, Section 26 (6) (a) and 26 (6) (c)

<sup>4</sup> *Ibid*, (as amended), Section 26B

satisfied that there are special reasons to accept a complaint about matters that the complainant has been aware of for over twelve months.

### **Council tax discounts and council tax benefit**

8. Tax is payable by most people who occupy their own home: and local authorities have a duty to collect council tax where it is due. Where the occupier is the only adult living in the property, they are entitled to a “single person discount” of 25%.
9. Those who are severely mentally impaired – that is, who suffer, for whatever reason, from severe impairment of intelligence and social functioning which appears to be permanent – are disregarded for council tax purposes. If the only occupier of the dwelling is severely mentally impaired, that would usually lead to a 50% reduction in their council tax bill. In order to qualify for this discount, the person concerned must supply a doctor’s certificate confirming that he or she is severely mentally impaired and be entitled to one of a number of specified state benefits, including certain disability benefits.
10. A Council has discretion to reduce the council tax payable on a dwelling to nil if it sees good reason to do so.<sup>5</sup> This may be applied to either an individual property or a local class of dwellings with their own exemption or discount rate.
11. A person who is unable to pay council tax for which they are liable because they have too little income, may claim council tax benefit. This benefit is usually administered by the local authority for the area in which the claimant resides, and is subject to the law<sup>6</sup> and regulations.<sup>7</sup> The benefits system in place in the period for which Miss Byrd lived in Exeter (1997 to 2002) put the onus on the claimant to make a claim for benefit and to provide any evidence the Council considered reasonably necessary to verify their circumstances.
12. The claim had to be renewed at least annually and the claimant was required to tell the Council of any changes in their circumstances which might have affected the rate of benefit. Benefit could be backdated at the Council’s discretion, but only for a period of 52 weeks. If a person was not capable of dealing with this personally, it would have been possible to obtain help and advice from a welfare rights adviser (for instance, the Citizens Advice Bureau) or an appointee could be nominated if that was insufficient to facilitate a claim.

### **Recovery of council tax benefit**

13. Where a sum of council tax is unpaid, a Council may seek an order from the Magistrate’s Court, known as a liability order, showing the amount owed. The Council then has a number of options available to it to try and pursue the debt. Some of these alternatives are described below.

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5 Section 13A, Local Government Finance Act 1992

## **The use of bailiffs**

14. 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. If a debtor has insufficient assets to cover the debt, and cannot or will not agree to repay, other options for recovery would need to be considered.

## **An attachment of benefit or earnings**

15. One 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. Where the debtor is in work, a similar court order can be made allowing recovery from earnings.

## **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 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 (ie 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 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. However, research into this area has noted that if a liability order has been made, "the Court is unlikely to look behind the circumstances of the making of the order".<sup>10</sup>

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<sup>6</sup> Principally The Social Security Contributions and Benefit Act 1992 (as amended)

<sup>7</sup> Principally The Housing Benefit (General) Regulations 1987 (SI no 1971/1987) and the Council Tax Benefit (General) Regulations 1992 (SI no 1814/1992)

<sup>8</sup> Council Tax (Administration and Enforcement) Regulations 1992, 47 & 48

<sup>9</sup> Ibid, Paragraph 49(1)

<sup>10</sup> See Murdie & Wise, Enforcement of Local Taxation, Legal Action Group 2000

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.
20. Where a bankruptcy order is made, and a debtor has assets that might be realised to settle a debt, a licensed insolvency practitioner will be appointed as a 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 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>
23. A Bankruptcy Order may be annulled on one of three grounds:
  - That the order was not validly made (procedural impropriety);
  - All the debts owed have been paid off;
  - The debtor has agreed with her creditors to enter into a voluntary agreement.

### **Charging orders**

24. 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 £1,000. 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. This too, can be suspended at the Court’s discretion; for example on the basis of an order that regular repayments are made. A Charging Order can

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<sup>11</sup> Griffin v Wakefield Metropolitan District Council, Court of Appeal (2000)

<sup>12</sup> Council Tax (Administration and Enforcement) Regulations 1992, regulations 50 and 51

only be made in respect of the property upon which the council tax debt was owed.<sup>13</sup>

### **Exeter City's policy on bankruptcy and charging orders**

25. The Council has a procedure manual for recovery of council tax. The chapter dealing with bankruptcy as a means of recovering council tax arrears says that any account that has a debt of over £1,500 which is at Liability Order stage and has already been to the bailiffs may be considered for bankruptcy. Ideally the debtor should be a homeowner; but tenants can be considered for bankruptcy where there is a large debt and the tenant is not on any type of Benefit (Income Support or Jobseeker's Allowance being provided as examples). But no check is prescribed to discover whether there is any other reason why bankruptcy proceedings would not be appropriate.
26. Each case is considered by an experienced Revenues Collection Manager. He has recourse, where necessary, to legal advice on insolvency matters. The officer and the Council's solicitors have discretion to consider making further checks. The Council says that its revenues collection officers work closely with the Council Tax Benefit section, endeavouring to ensure that a debt is reduced or extinguished through payment of council tax benefit where there is entitlement. The Council says that it regards bankruptcy as a last resort and that where bailiff action had failed, it would either seek recovery by way of an attachment order against earnings or benefits, or through a charge on any property owned by the debtor. Committal proceedings were seen as a way of forcing a debtor's co-operation in either making payment or providing reasons why they should not be expected to do so.

### **The Council's Retention and Disposal Policy for maintenance of council tax benefit records**

27. At the time that Miss Byrd claimed council tax benefit, the Council retained paper files relating to a claim within its office until after the appeal period for the last claim ended. Files were then archived and held until the external audit had been completed, when they were destroyed. If a subsequent claim was made, the old files would be retrieved from archives and destroyed only when the later claim papers were eventually shredded. Information relating to vulnerability and the circumstances of the claimant would have appeared only on the paper files, and would be lost when those files were destroyed.
28. Information about the period of the claim and the amounts of benefit awarded was computerised; this information was accessible from a new computer system introduced since Miss Byrd last claimed council tax benefit. But any written

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13 Regulation 50, Council Tax (Administration and Enforcement) Regulations 1992 SI no 613/1992

information on the old computer system could not be accessed by the new system, and it would have been necessary to have referred to the paper files.

### **The Council's policies and procedures for welfare rights and anti-poverty measures**

29. The Council does not currently have a written policy relating to welfare rights or to anti-poverty. However, it says that where households approach the Council's Housing Advice Service they are signposted, where appropriate, to services who are able to offer full advice and assistance with budgeting, welfare benefits and mortgage advice. These agencies are all partners with the Council with the dedicated aim of preventing homelessness.
30. In most cases, the Council provides funding for specific services linked to its homelessness strategy. It says that the main agency so funded, Homemaker South West, provides a wide range of welfare benefit and financial advice and is extremely successful. Recently the Council has funded a confidential helpline with this organisation which is aimed at households with mortgage arrears who are getting into difficulties. The service has been advertised to try and persuade people to take advice early enough to make a difference to the outcome. The Council says that the service has been popular and there is evidence of success. The Council considers it likely that a subsequent reduction in the rate of mortgage repossessions in the summer of 2008 was partly attributable to the Homemaker service.

### **Investigation**

31. Miss Byrd became pregnant and infected with Human Immunodeficiency Virus (HIV) in her late teens, as a result of an association with a man who knew himself to be HIV positive. She has also had an addiction to heroin, and Mrs Byrd says that as a result of this her daughter has mental health problems and her capacity to manage her affairs has been extremely poor. She initially had support from Social Services, but her son was taken into care when he was 11 years old as she was no longer able to cope, and Mrs Byrd subsequently obtained a Residence Order for him. Miss Byrd has had no support from Social Services since then, and although diagnosed HIV positive, has had no medication. Mrs Byrd believes that she has since developed Acquired Immunodeficiency Syndrome (AIDS) but this has not been diagnosed because Miss Byrd has been unable to engage with the health care services. Mrs Byrd says her daughter's life style has long been somewhat chaotic, with her only support coming from her family.
32. Miss Byrd lived at an address in Exeter from May 1997 to November 2002. She owned the property, but sold it and went to stay with a relative, later buying another property in the south east of England, where she still resides. Between the time Miss Byrd moved to Exeter and May 1999 she claimed council tax benefit. The Council has not been able to provide any information about this

claim, including the circumstances in which it was made and lapsed, the records having since been destroyed. It has not, therefore, been possible to establish whether she had any assistance in claiming benefit. It is also impossible to say whether Miss Byrd ever provided the Council's Benefits section with information about her mental health difficulties.

33. Mrs Byrd says that while her daughter lived in Exeter, unpaid utility bills were recovered by the companies concerned making a charge on the property. Mrs Byrd says she knew of this but says she had no idea at any time that there was a problem with council tax, because she understood that in 1997 her daughter had informed the Council that she was exempt from paying council tax. However, this is not shown in the Council's remaining records. Mrs Byrd says that the first she knew of the arrears of council tax which had accrued was in the spring of 2007. She says that her niece, who lived in the same area as Miss Byrd, had seen a notice in the local paper that a Bankruptcy Order had been made against Miss Byrd, and had telephoned Mrs Byrd to warn her of it.
34. Miss Byrd's debt arose over an extended period, during which she did not continuously claim council tax benefit and the Single Person Discount, even though it appears likely that she would have been entitled to benefit covering most if not all of the debt. According to the Council's records, she did not claim exemption from council tax on grounds of severe mental impairment at any time. She never paid any council tax while living in Exeter; and Mrs Byrd says that she does not believe her daughter would have been capable of renewing the council tax benefit claim by 1999. The details of council tax owed are set out in an appendix to this report.
35. Miss Byrd was in receipt of Single Person Discount until 31 January 2000. The Council says that Mrs Byrd was living with her daughter from that time until 14 August 2000 and that it had sent Miss Byrd correspondence about the debt during that period. Mrs Byrd says that she was totally unaware of any problem, and that Miss Byrd did not mention the reminder and summons she would have received at this time. Mrs Byrd says that she only stayed at the house one night a week as she had a residential job. This was a very difficult time, and she had been obliged to report her daughter to Social Services, which made Miss Byrd regard her as a spy. After she left, the debt continued to increase and Miss Byrd apparently did not renew her claims either to Single Person Discount or to council tax benefit.

#### **Pursuit of the debt: October 2000 to December 2002**

36. Recovery of the debt was first taken up through the Council's internal bailiff in October 2000, and Miss Byrd was visited at home. She told the bailiff that she was now receiving a disability benefit and was advised that this should entitle her to some council tax benefit. She was advised to contact the Council and make a claim, but did not do so. I understand that recovery action was suspended to allow her to do so. At that stage, Miss Byrd would have been able to request that her

benefit be backdated to the time of the last claim. Had the Council considered there was good reason to do so, backdating would have reduced, but not entirely cleared, the debt which the Council was pursuing.

37. Between April 2001 and December 2002 the internal bailiffs were again involved in pursuing the increasing debt. According to a brief note on the Council's computer records, Miss Byrd telephoned the Council on 26 April 2001 and explained that she was terminally ill and had disability benefits. Again, she was advised to claim council tax benefit and said that she would come into the office the next day to fill out the claim form and discuss repayment. However, once more there is no evidence that she ever applied for benefit and there was no record available to council tax recovery officers of her previous claims.
38. The Council says that this would be due to a change in computer systems which had happened since her last claim had ended in 1999. It says that any records held from 1999 relating to Miss Byrd's individual circumstances and vulnerability would be in paper form, and were likely to have been archived once the claim had lapsed and the time limit for appeals had expired. They would then have been stored in the archives until the external audit was complete, which would be at least October 2001. The Council says that it expects that the paper files relating to the last council tax benefit claim in 1999 might have been destroyed during 2002.
39. Had Miss Byrd made contact before the files were destroyed, they would have been retrieved from store and the archive process started afresh. Therefore, if she had made a further claim to council tax benefit in 2001, the files relating to the earlier claim would not have been destroyed until the new claim files had been audited in 2003.
40. At the time of the last claim in 1999, the Council says that where a claimant was considered vulnerable, the paper file was marked with a coloured sticker. No separate list was retained unless the claimant was considered potentially violent. The Council is therefore unable to say whether her file was marked for vulnerability, and this information would not have been transferred to the new record system unless she made a further claim. The Council therefore considers it likely that the only information which would have been known to the council tax recovery officers in 2001 was that she had been a lone parent in receipt of Income Support, claiming council tax benefit only; and that she had apparently managed to make and renew her claim as necessary between August 1997 and May 1999.
41. The Council says that "numerous" visits were made to Miss Byrd's address by the internal bailiffs but no contact was made. The last visit appears to have been made on 10 June 2002. The Council then appears not to have pursued the debt further until December 2002, when it says that registration for council tax by new owners of her former home alerted it to the fact that she had sold the house and moved away during the previous month.

42. The Council says that during her brief contacts with the Council and its bailiffs, Miss Byrd had not mentioned any mental health problems or issues of her own capacity to manage her financial affairs. The Council says it is likely that she did not advise it of the move, because the bailiffs had referred the case back to the Council to trace her whereabouts. However, Mrs Byrd says that her daughter normally does not open her post, but simply puts it unopened in the recycling bin.

### **Pursuit of the debt from 2003**

43. The debt was taken up again in June 2003, by which time Miss Byrd had moved away. Having traced her whereabouts, the Council instructed a bailiff to pursue the matter with her at her new address, but no contact was made with her. In June 2004 the case was referred back to the Council by the external bailiffs and although the file was then sent to the Council's solicitors, Messrs Parry and Stanford, the Council was advised by its lawyer to make further enquiries through the bailiff, with a view to discovering whether Miss Byrd had any assets or income from which the debt could be recovered.
44. A statutory demand was served on Miss Byrd on 30 July 2004. At that stage bankruptcy was not advised by the Council's solicitor, however, because of the high costs of doing so: and the Council accepted this advice. If Miss Byrd had insufficient means to effect recovery of the debt and the costs of the bankruptcy, the shortfall would eventually have fallen to the public purse.
45. The Council has not been able to say exactly what happened after that, although it says that it seems from the evidence that the case was regarded as one for committal proceedings. It says that there was a limit upon the number of such cases that would be accepted by the Magistrates Courts at that time, and because Miss Byrd was not resident in Exeter – and therefore potentially unlikely to turn up for proceedings which were likely to result in imprisonment – her case was not given priority.
46. At some subsequent stage, probably in 2006, the Council says that its internal bailiffs contacted the Council Tax Office dealing with the area in which Miss Byrd now lives, and learned that she owed them approximately £3,000 on which local Magistrates had issued a Warrant of Arrest. Mrs Byrd says that she had contacted the Council which had claimed this debt and found that it had known of her daughter's health problems at the outset. The Council dropped its action and her daughter was never arrested. In September 2006 the Council therefore returned the file to Parry and Stanford, at which point it was established that Miss Byrd owned the property in which she now lived.
47. Officer A, a Revenues Collection Manager, says that he considered the case and decided to commence insolvency proceedings with a view to trying to find out why benefit had not been claimed, and whether there was any good reason why the Council should not be pursuing the debt. Clearly the house was likely to enable recovery of the amount due, either by way of raising a secured debt or, if

Miss Byrd was unable or unwilling to co-operate with that, by realising the asset which could be done by a Trustee in Bankruptcy.

#### **Enquiries made by the Council's solicitors after service of a statutory demand**

48. The Council says that a further statutory demand was served personally on Miss Byrd at her home on 20 October 2006, and an affidavit of service would have had to be presented in court when the bankruptcy petition was heard. Following this the solicitors wrote to her to ask what her proposals were to satisfy the demand. By this time she was too late to claim council tax benefit, but the Council says that if the true facts had been known, it would not have pursued her to bankruptcy.
49. Parry and Stanford say that they were given Mrs Byrd's telephone number as a contact for her daughter, having been advised she was staying with her mother in Exeter. A process server contacted Miss Byrd and she agreed to meet him at her mother's home on 14 February 2007. Mrs Byrd says that this was done without her knowledge and that her daughter said nothing of it to her.
50. Miss Byrd seems to have realised that there was a problem just before the court hearing was due, because Parry and Stanford say that she telephoned them and that, on the Council's instructions, they sought an adjournment of the hearing to allow her time to deal with it. The solicitors wrote to her on 14 March, offering on the Council's behalf to waive some of the costs if payment of the balance of £3,652 was made before the new hearing date, which was later set at 19 April.
51. Again the solicitors spoke to Miss Byrd, and have provided a note of a conversation on 11 April 2007. From that record, it appears that Miss Byrd "did not appear to know what [the solicitor] was talking about and generally sounded slightly confused". She said that she had not seen the letters sent by the Council and asked where they had been sent to. When told they were sent to her current address, she disclosed that she "had not bothered opening [them] and thought they were probably in the recycling". She asked "why [she] should bother dealing with this when [she did] not owe council tax anyway as [she was] on disability benefit".
52. While the solicitor recorded that he had explained the situation to Miss Byrd, she had responded that she was unhappy with the situation and was likely to contact her MP. When told that it was important for her to deal with the matter as soon as possible to avoid bankruptcy, she mentioned the possibility of repaying some money by instalments, and was told that any offer would need to be substantial to be acceptable. The solicitor expressed a view that Miss Byrd would not deal with the matter, based on her previous conduct in failing to open correspondence, and said that the debt had been pursued over a long period without success. He would, however, talk to the Council to clarify matters. Miss Byrd did not call back the following day with a payment proposal, despite having promised to do so.

53. The solicitor then spoke to officers in the Council, apparently to try and find out how the debt had arisen and what was known of Miss Byrd's circumstances. However, the Council's records contained no information beyond that set out above. This included the disclosure, made to a council tax recovery officer in 2001, that Miss Byrd was terminally ill and receiving disability benefits. No check was made with Social Services (either in the Exeter area or the Adult Services authority dealing with the area where Miss Byrd now lived) and the Council had no information as to which family doctor she might be registered with. Having said this, it appears that Miss Byrd did not receive adult care services and may not have been registered with a GP.
54. Mrs Byrd says that she believed her daughter had met with a solicitor from Parry and Stanford at some stage. She says that it would have been impossible to overlook her health and dependency problems from her appearance. However, Parry and Stanford say that while their representative had two conversations with Miss Byrd (reported above in paragraphs 50 and 51) these were both conducted on the telephone and they never met Miss Byrd face to face.
55. Miss Byrd was made bankrupt in April 2007. The Council, as petitioning creditor, was the only creditor to claim against Miss Byrd. Mrs Byrd says that she found out that her daughter had been made bankrupt only after the Bankruptcy Order was made. She contacted the Council's solicitors and the Council, on learning of the circumstances, withdrew its claim in the bankruptcy. It said that this was done exceptionally and without prejudice to its position that the Bankruptcy Order was validly obtained and based upon outstanding Liability Orders.
56. Miss Byrd's Trustee in Bankruptcy says that although the debt on which the bankruptcy petition was based had been withdrawn by the Council and there are no other creditors, there remained a debt which by March 2008 stood at over £11,000 comprising the costs and fees of the Trustee and the Department of Trade and Industry. Mrs Byrd has attempted, although unsuccessfully, to raise funds to pay off this debt. The Trustee says that if negotiations fail, it would be unlikely that a court would order the property to be repossessed to recover the costs and that as an alternative he would seek an order in court to put a charge on the house. That would secure the debt plus interest (which would, however, continue to accrue). It would also allow him, as Trustee, to seek his discharge, so that he was not obliged to make any further charge for administering the case.

## **Conclusions**

### **Jurisdictional issues**

57. Before considering whether Miss Byrd has suffered injustice through maladministration, I need to look at the extent of my jurisdiction to investigate this complaint, as set out in the Local Government Act 1974, amended by the Local Government and Public Involvement in Health Act 2007 (see paragraphs 4 to 7).

58. First, I have considered the provisions on the “conduct or commencement” of legal proceedings. In this connection it is clear that I have the power to investigate a complaint up to the point at which bankruptcy proceedings commenced. The history of the subsequent period is therefore recounted in this report purely as background information. And I am satisfied that nothing prevents me from considering whether anything that was done by the Council after proceedings commenced served to remedy any earlier administrative errors that I might find.
59. The events covered by this complaint took place more than twelve months before it was made to me. Nevertheless, I consider it reasonable to exercise my discretion to investigate the complaint, because, on the evidence, Miss Byrd was not capable of making a complaint to me herself. In addition, Mrs Byrd has pursued the matter with the Council and then with me since becoming aware of it and her complaint was made to me within twelve months of that date.
60. In 1999 Miss Byrd would have had the option of appealing any decision which had been made not to continue to pay council tax benefit. She also had appeal rights with respect to reinstatement of her Single Person Discount once her mother left her home. It is not clear from the evidence whether she needed to appeal, or whether she simply allowed her claims to lapse in the belief that she was not required to pay council tax, and did not understand the need to claim council tax benefit separately from her state disability benefit. But I am satisfied on the evidence that Miss Byrd is unlikely to have been capable of pursuing her claims or the associated appeal rights herself or of seeking help in doing so, and that her mother was unaware of the problem that was storing up and therefore unable to help. I therefore consider it unreasonable to expect Miss Byrd to have used any appeal rights she might have had; and so the complaint lies within my jurisdiction.
61. For the same reasons I do not consider it was reasonable to expect Miss Byrd to contest her bankruptcy on grounds that the debt was not owed because she was entitled to council tax benefit and Single Person Discount. In all, I am satisfied that I am able to look at all of the Council’s administrative actions up to the point where the bankruptcy proceedings began.

### **The Council’s actions leading up to bankruptcy proceedings**

62. I consider that Miss Byrd is unlikely to have claimed benefit or Single Person Discount since 1999, and in the absence of such a claim, I have no reason to doubt that council tax was correctly demanded and the subsequent liability orders properly obtained. So I accept that the debt of £2,755.07 was owed and that the Council had a duty to all of its taxpayers to try to recover it. And while I am unable to say whether or not the Council’s Benefits section was ever aware of her physical and mental health problems, I accept that it is unlikely that the Revenues Collection section was ever given more detail than the bare statement, made in April 2001, that Miss Byrd was terminally ill.
63. Nevertheless, this information was on file and the Council appears never to have followed it up with Miss Byrd before launching the proceedings that would eventually lead to her bankruptcy. The Council appears to have had no information about the nature of her physical condition, how her health might have

deteriorated since 2001, or about the possible effects of her illness upon her ability to deal with her own affairs. If it were true that she was terminally ill, it may not have been appropriate to pursue the complainant to bankruptcy on the grounds of her poor physical health alone. If it were not true, but had been offered as an excuse for non-payment, then there could be no justification for not pursuing the debt rigorously.

64. I consider that this issue should have been pursued with Miss Byrd, preferably in 2001 so that a clear decision could have been taken as to how most appropriately to pursue the debt and avoid further arrears accruing. At that stage the officer taking the call could have sought further detail, or passed it on for someone else to do so. But the evidence shows that either the questions were never asked, or the answers were never recorded. I accept that the Council could not have anticipated that Miss Byrd would later move, and apparently did not know how much longer she might survive. Nevertheless at this time the Council could have taken a charging order on her house, and bankruptcy is therefore unlikely to have been preferred as an option.
65. In 2001 Miss Byrd could also have been put in touch with a welfare rights adviser or referred to Social Services to assist her to claim council tax benefit, or offered a home visit by an officer from the Benefits staff. Assistance given with her claim for council tax benefit would probably have reduced the existing debt and ensured that for the future Miss Byrd received the benefits and discounts to which she was entitled. It would also have been possible to extract any information about her circumstances, her vulnerability and the reason why the claim ceased which might have been held on the benefits paper file. Had the problem been flagged up for the Revenues Collection Manager at this stage, I consider it likely that the matter would have been resolved leaving little or no council tax arrears outstanding. The failure to pursue the matter in 2001 was maladministration.
66. A further opportunity was missed in late 2002, when the debt was returned by the bailiff. At that point Miss Byrd might still have sought backdating of benefit and reduced the debt in part, and the Council could then have considered remitting the rest.
67. But failing that, clarification should have been obtained before issuing the first statutory demand in 2004. At that stage there was no longer a possibility of reducing the debt through a benefit claim and backdating, because Miss Byrd no longer lived in the property on which tax had been charged, and had not done so for over 52 weeks. I cannot say that the Council would necessarily have learned of Miss Byrd's mental health problems, although if the mental health difficulties from which she suffered had been revealed, Miss Byrd could have been advised to consult a medical professional to see if her condition might entitle her to exemption from council tax. But the Council could at least have confirmed through suitable questioning that she was in poor health generally, that she had been receiving disability benefits and so would be entitled to some council tax benefit, but that she was no longer managing her financial affairs properly. It appears

likely that the Council had either overlooked this information about her health, or had discounted it as untrue.

68. Given the stress such a document might cause, the limited time allowed to satisfy the statutory demand, and the very significant financial consequences of failing to do so, I do not see it as appropriate to threaten with bankruptcy someone who may – at least as far as the Council knew – have been close to death and with no means of immediate payment, without first exploring all possible alternatives and considering in depth whether such action is appropriate.
69. Yet the Council issued two such demands. The issue of a first statutory demand would, in my view, have made it more likely that a second would be considered appropriate without stopping to ask if that were the case. I do not consider that the enquiries made after the second statutory demand was issued adequately or appropriately substituted for proper enquiries made earlier; or remedied the earlier maladministration. It is also evident that the bankruptcy procedures did not protect Miss Byrd once proceedings began, when my own jurisdiction, and the protection which that might have afforded her, no longer ran.
70. The failure to make more rigorous enquiries in 2003 and 2004 before issuing a statutory demand was also maladministration. In my view, these omissions are likely to have sprung from the Council's failure to put in place adequate checks within its written procedures that all recovery officers could follow at an early stage. I am concerned that the lack of such a policy has allowed a very vulnerable person to slip through the net.
71. It seems to me that there really should be rigorous procedures in place for a Council to satisfy itself that a debtor is wilfully refusing to pay rather than, as a result of incapacity, proving unable to protect their own interests. The lack of a proper policy was maladministration.
72. I am also concerned that no written record was kept of how these decisions were made or what information the Council had to work upon. This reduces the protection that is in place for the debtor (if the decision is wrongly taken) and for the Council (where a correctly taken decision is made but challenged). As procedural impropriety is a reason for annulment of a Bankruptcy Order, it would appear to be necessary to maintain clear records. The failure to do so here was maladministration.
73. It seems to me that if robust written procedures had been in place, so that proper enquiries had been made in 2001, Miss Byrd might never have been made bankrupt, and the Council would not have had the trouble or expense of pursuing her, although I cannot be certain of that. It appears that Miss Byrd's health deteriorated significantly through the 1990s when she lost care of her son and then stopped claiming benefit. Given that she was not in the habit of reading her post, and her belief that the debt was not owed and that she need do nothing about it, it would always have been very difficult for the Council to have picked up what was happening here, even had proper checks been made. And Miss Byrd's reclusive behaviour, which was apparently a function of her mental health condition, would not have assisted that process.

### **A local settlement of the complaint**

74. It is very much to the Council's credit that once the problem was recognised, it acted quickly and sympathetically, withdrawing its claim in the bankruptcy. As the Council was the sole creditor, that left Miss Byrd to bear the significant costs of the bankruptcy if the Bankruptcy Order was to be annulled. I am very pleased to note that the Council has undertaken to pursue an annulment of the Bankruptcy Order, bearing any necessary costs itself. These are currently estimated at £10,000. I regard this proposed action as a suitable way of settling the complaint. But I have decided to complete my investigation and issue this report on the complaint as it raises issues of general public interest.

**J R White  
Local Government Ombudsman  
The Oaks No 2  
Westwood Way  
Westwood Business Park  
Coventry  
CV4 8JB**

**4 March 2009**

## Appendix

### Breakdown of the council tax debt owed by Miss Byrd

Tax year	Total due £	Arrears of council tax £	Costs £	Remarks
1997/1998	119.81	84.81	35.00	Debt reduced by Single Person Discount and council tax benefit
1998/1999	NIL	NIL	NIL	Debt covered in full by Single Person Discount and council tax benefit
1999/2000	518.87	449.87	69.00	Debt reduced by Single Person Discount and council tax benefit
2000/2001	761.64	704.64	57.00	Single Person Discount and council tax benefit not claimed
2001/2002	816.74	753.74	63.00	Single Person Discount and council tax benefit not claimed
2002/2003	538.01	518.01	20.00	Single Person Discount and council tax benefit not claimed
<b>Totals</b>	<b>2,755.07</b>	<b>2511.07</b>	<b>244.00</b>	

### Breakdown of Council's claim in the bankruptcy:

	£
Petition debt (see above)	2,755.07
Costs of obtaining the Bankruptcy Order	1,902.01
	_____
Total claim	4,657.08