

**Report by the Local Government and Social Care  
Ombudsman**

**Investigation into a complaint against  
Cotswold District Council  
(reference number: 20 008 553)**

**5 August 2021**

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## The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr X            The complainant

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## Report summary

### Council tax

Mr X complained the Council:

- was wrong to send him reminders to pay his council tax bills, as he was making payments as agreed;
- did not properly consider his request to write off arrears; and
- did not promptly action his request to apply for council tax support.

### Finding

We find fault in the Council's handling of Mr X's council tax account and its decision making on council tax relief, causing Mr X injustice. We have made recommendations.

### Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the injustice identified we recommend the Council carry out the following actions:

- provide Mr X with a written apology;
- pay Mr X £300 for distress and uncertainty;
- reconsider Mr X's request to write off his arrears and write to him with reasons for its decision with reference to its Recovery Policy;
- invite Mr X to apply for discretionary relief, making clear any evidence he should provide to support an application and informing him of the criteria against which it will consider his application;
- publish a council tax discretionary relief policy on the Council's website. This should include the process for considering a request, criteria for assessing a request and notice of the right to appeal the Council's decision to the Valuation Tribunal;
- provide training or guidance to relevant staff to ensure they inform customers of any opportunities to apply for benefits, discounts or relief and they consider such requests in line with relevant policies; and
- remind staff of the need to provide clear information to customers about any payment plans at the outset, including how or when they will end, details of any review and warning of any further recovery action.

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## The complaint

1. Mr X complained the Council:
  - was wrong to send him reminders to pay his council tax bills, as he was making payments as agreed;
  - did not properly consider his request to write off arrears; and
  - did not promptly action his request to apply for council tax support.
2. Mr X says the Council's actions have caused financial hardship, distress and poor health.

## Legal and administrative background

### The Ombudsman's role

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. This complaint involves events that occurred during the COVID-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance during this time. We can consider whether the Council followed the relevant legislation, guidance and our published ["Good Administrative Practice during the response to Covid 19"](#).

### Council tax recovery

6. If a person does not pay their council tax bill when due a council will issue a reminder. A council must issue at least one reminder before issuing a summons for a liability order hearing at the magistrates' court.
7. The Council's website says it will send a reminder notice if someone misses an instalment, requesting full payment of the missed instalment within seven days. If only part of the outstanding amount is paid it will take further recovery action.
8. The Council's Recovery Policy (2019) says the Council's actions will be proportionate, consistent, and transparent. Additionally it will be firm and fair, and its manner will be courteous.
9. Where the potential for a statutory benefit or discount exists in relation to the debt, efforts will be made to make the customer aware of such opportunities and they will be assisted and encouraged to apply for these.
10. Debts will normally only be considered for write off where the account is closed and there is no recurring debt. Only in exceptional circumstances will amounts on live or on-going accruing debt accounts be considered. Such cases must demonstrate that further recovery action will not achieve collection of the debt.
11. It cannot list every scenario which could make a debt suitable for write off; but it sets out the main reasons why debts become irrecoverable and where approval

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for write off should be sought. We note one reason is hardship, with each case decided on its own merits.

### **Discretionary council tax relief**

12. Councils have discretion to apply a discount to reduce any person's council tax liability to any extent they see fit under section 13A(1)(c) of the Local Government Finance Act 1992 ("LGFA 1992").
13. We expect councils to have a process for considering any request and established criteria. If a person is unhappy with a council's decision, they can appeal to the Valuation Tribunal.
14. In response to enquiries the Council said it did not have any formal process in place for considering discretionary council tax relief. If someone did want to apply, the process would be to write to the Council explaining the reasons why they should be considered for the relief, giving details of their finances. A member of the Senior Management Team would then take a report to Council Members to decide whether any reduction should be given. There was no policy for this as the Council simply followed legislation laid down by the Government under s13 (as amended) of the LGFA 1992.

### **Council tax hardship fund**

15. In March 2020 the Government gave councils additional funding to support those facing hardship during the COVID-19 pandemic. It published guidance to councils on how to apply this relief.
16. The Government expected councils to use the funding to reduce council tax liability for those already receiving council tax support. However, councils could establish their own approach in using any remaining funds. This could include, but was not restricted to:
  - council tax relief using existing discretionary discount/hardship policies (adapted where necessary to capture those most likely to be affected by COVID-19);
  - additional support outside the council tax system through Local Welfare or similar schemes;
  - a higher level of council tax reduction for those working age Council Tax Support ("CTS") recipients whose annual liability exceeds £150.
17. In response to enquiries the Council referred to Cabinet meeting papers for 1 March 2021, published online. These included a report for the Cabinet to consider the use of any surplus funds from the hardship fund. The Council proposed to award an additional amount to all working age CTS recipients who had an excess liability of £150. Reasons for this proposal were outlined in the report. The Cabinet agreed the proposal.

### **Council tax support**

18. The Council publishes details of its CTS scheme on its website.
19. A person may be able to get help with their council tax bill if they are on a low income or claim benefits. They can complete an online application form and the Council will make a decision within 14 days.

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## **Principles of Good Administrative Practice**

20. In 2018 we published a guidance document setting out the standards we expect from bodies in jurisdiction [“Principles of Good Administrative Practice”](#). This includes:
  - informing service users what they can expect and what the organisation expects of them;
  - being open and clear about policies and procedures and ensuring information, and any advice provided, is clear, accurate and complete; and
  - stating the criteria for decision making and giving reasons for decisions.
21. In May 2020 we issued an addendum in response to the COVID-19 pandemic: [“Good Administrative Practice during the response to Covid 19”](#). Although we recognised councils were working under pressure we still expected similar standards. The guidance says:
  - basic record keeping is vital during crisis working. There should always be a clear audit trail of how and why decisions were made;
  - the basis on which decisions are made and resources allocated, even under emergency conditions, should be open and transparent;
  - decision reasons should be clear, evidence based and where necessary explained in the particular context and circumstances of that decision; and
  - if you use new or revised policies and processes this should not lead to arbitrary decisions and actions. Ensure you have a clear framework for fair and consistent decision making and operational delivery.

## **How we considered this complaint**

22. We produced this report after examining relevant documents and interviewing the complainant.
23. We gave the complainant and the Council a confidential draft of this report and invited their comments. Any comments received were taken into account before the report was finalised.

## **What we found**

### **What happened**

24. We have reviewed all information relevant to this complaint, but have only referred to key points below.
25. Correspondence dating from March 2019 shows Mr X was in regular contact with the Council about council tax payments due to his financial difficulties.
26. In January 2020 Mr X asked the Council if he was entitled to CTS as he received a benefit and he questioned why this had not been offered previously. He asked for further information about availability and eligibility.
27. The Council officer who responded said this was not their department, but he could claim CTS as he was reliant on one income and he should call and speak to an assessor about this.
28. In March 2020 Mr X offered to pay the Council £178 owed for the tax year 2019/20 in early April and then the 2020/21 bill at instalments of £116 a month.

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29. Mr X and the Council exchanged further correspondence. The Council wanted Mr X to pay £178 by 31 March but Mr X said he would not have funds to do so.
  30. On 19 March Mr X explained to the Council that he and his wife were due to shield for the next three months due to the COVID-19 pandemic which may affect their income. They were close to qualifying for CTS and expected to qualify from 6 April 2020. He asked the Council to signpost him to any other financial support.
  31. The Council told Mr X the outstanding £178 had automatically been added to the next billing period. It was waiting to find out more about Government support but it would suppress his payments for one month.
  32. On 31 March Mr X told the Council his wife had been put on furlough. The Council sent him a CTS application form. He asked what else the Council could do to help. The Council told Mr X it could not reduce the sum owed.
  33. On 2 April Mr X offered to pay £100 a month for the next three months or until the Government lifted COVID restrictions. The Council agreed.
  34. On 1 July the Council sent Mr X a letter saying it had not received his regular payment for council tax.
  35. Mr X contacted the Council as he received this letter about non payment, despite paying amounts as agreed.
  36. On 13 July the Council confirmed it had been receiving Mr X's payments of £100 as agreed. It explained the system automatically thought he should have paid more by now as his instalments were slightly higher at £131. The Council officer said they understood the Council was still waiting for his CTS to be sorted and so the officer had suppressed the account to ensure it did not send any further reminders. The officer said he should disregard the letter as the Council was aware of his situation and there were notes on the account to reflect it.
  37. On 20 October Mr X contacted the Council as it had sent him a formal reminder notice. As he had made payments as agreed he found the content inappropriate and wanted to complain. It had now sent two letters and so not administered his account properly.
  38. In response the Council directed Mr X to its complaints process. It explained it had agreed for him to pay £100 a month on the expectation he would apply for CTS but he had not done so. It issued a reminder letter in July as a "soft reminder" to customers behind on payments, to offer them the chance to discuss how best to move forward. Following his contact it withdrew that letter from his account. The official recovery procedure began again when it issued the new reminder letter on 13 October. It had not heard from him since July and could not keep a suppression on the account indefinitely. It was his responsibility to contact it and update on his current situation. As it did not hear from him the next step was to start recovery. It would place one final suppression on his account until November.
  39. Mr X complained further. He said the letters were not polite and caused anxiety. He had asked for and been promised a CTS form in the post three times and each time it did not arrive. In July the Council agreed he would continue to pay £100 monthly with a review in October. He had not missed any payment to justify a reminder letter. Stress triggered his disability and he was now housebound as a consequence of its communications. He asked the Council to remove the reminder notice, waive the arrears, and agree a payment plan.

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40. The Council told Mr X it had agreed for him to pay £100 a month rather than the amount due of £131 a month; this meant a debt was building up. It did not have a record of an agreement to review payments in October and so it issued a reminder letter for payment of the arrears. It understood his concerns about the content of the letter. However, its officers had been understanding of his circumstances and the arrears were long standing. It cannot find any reason why he would not have received CTS application forms. If he could provide details of who he spoke to and when it would investigate further. He could also download the form from its website. It accepted the content of the first reminder was inappropriate and apologised for the distress. It would review the content of these going forward. It could not write off arrears through the complaints process and the reminder remained until he had spoken to the team and agreed a new payment plan.
41. In response Mr X said they most recently discussed and agreed the payment plan on 13 July with the intention to review in October. He had not missed any payments from the agreed plan and so it should not have sent a reminder. It had not adequately dealt with his complaint about the tone and content of the reminder letter. Its comments did not repair the damage caused in terms of anxiety and health issues. He did not have records of staff spoken to about CTS. He wanted to escalate his complaint seeking resolution as set out before.
42. The Council's final response said:
- on 13 July 2020 it was agreed he could remain on reduced payments of £100 and he was urged to make an application for CTS to help him through this period. This was the last contact he made with the Council, and although he was making payments of £100 a month, the arrears on his account were accumulating. It was for this reason that it issued the reminder. It could not find any reference to an agreement to review in October;
  - in July it sent a standard letter to all households in arrears. However, the content did not reflect his specific circumstances and it apologised for this;
  - it acknowledged his concerns about the format of the October reminder letter. Although he had not missed payments arrears were accruing and so it was appropriate to issue a reminder letter. Even where a payer continued to pay their monthly instalments, they will not avoid the issue of a summons or recovery action, as the legislation states they have lost their right to pay by instalments;
  - it could not find a record of his requesting a CTS form but he could download this from the website;
  - it was correct in issuing the reminder notice, but as a gesture of goodwill it would recommend the reminder be rescinded. But this could be reissued at any time and did not mean that it would not start further recovery action while his account remained in arrears;
  - its policy said that debts on live or on-going accruing debt accounts would only be considered for write off in exceptional circumstances. Having reviewed his case the officer was not satisfied that such circumstances existed and was therefore unable to recommend the debt for write off; and
  - he could contact us.
43. Mr X then contacted us.



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44. Following the Council's final response it sent a further CTS form to Mr X in November which he received. Mr X applied for CTS but was not eligible.
  45. In response to enquiries the Council provided a copy of its Recovery Policy, as referred to at paragraphs 8 to 11 above. It said it issued a reminder in October after lockdown had ended and recovery recommenced, in line with its Recovery Policy.
  46. The Council explained it did not keep records of calls unless relevant to a live benefits claim. Therefore, it had none to provide in relation to Mr X's case.
  47. The Council also explained it did not have any formal process in place for considering discretionary council tax relief, as referred to at paragraph 14 above. The Council did not otherwise explain how members of the public would find out about the availability of discretionary council tax relief.

## **Conclusions**

48. In April 2020 the Council and Mr X agreed a payment plan to continue for three months or until COVID-19 restrictions were lifted. We note some level of restrictions remained in place at the time Mr X complained to us. We have not seen any evidence the Council gave Mr X clear information on when the plan would come to an end or warn that he would face recovery action irrespective of keeping to payments. Rather it confirmed in July that it was receiving payments as agreed and would suppress further reminders.
49. The Council accepts it issued a reminder in July in error and it has already apologised for this. We are satisfied with its action in this regard.
50. While we acknowledge the Council issued a reminder in October in line with its Recovery Policy, it had not given Mr X clear information about its policy or ensured he knew what to expect. Further, it acted contrary to the information it did provide to Mr X; that it would suppress further reminders. This is fault. Mr X suffered distress and anxiety due to receiving the reminder notice without warning. We do not consider the Council's action of withdrawing the notice while threatening to reissue it at any time remedies this injustice. The Council should provide an apology and a payment for distress to Mr X. While the Council remains able to take recovery action, it should ensure its communications are clear in future.
51. Mr X made clear to the Council he was struggling to pay his council tax bills and asked what support was available. Yet the Council did not suggest he apply for discretionary relief at any stage. This is fault. We do not know if Mr X would have been eligible for support, but he has suffered further distress having asked for help to no avail.
52. The Council does not publish any information about a discretionary relief policy and it does not appear to have any set criteria for considering a request for discretionary relief. This is significant fault. Members of the public are not made aware such a scheme exists, there is no prompt for them to apply and, if they do apply, they do not know how the Council will consider their application. There is a risk of significant injustice in such circumstances.
53. The Council does have a policy for writing off debts, contained within its Recovery Policy. This says the Council can write off on-going debts in exceptional circumstances. Mr X asked the Council to write off his debt and was told he did not have exceptional circumstances. However, the Council did not provide any reasons for this decision. The Council has not shown it has considered Mr X's

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- circumstances against its policy. We are therefore not satisfied it has followed a proper decision-making process. This is fault, causing Mr X distress and uncertainty. We cannot say the Council should write off Mr X's debt but we can recommend it consider his request again and provide a decision with reasons.
54. Given Mr X asked the Council to write off his debt this was an opportunity for it to consider this as a request for discretionary relief. Yet it did not do so or otherwise allow Mr X access to appeal to the Valuation Tribunal against any decision to refuse such relief. This is further fault, resulting in avoidable distress and uncertainty to Mr X due to the missed opportunity for an earlier resolution.
55. Mr X says the Council agreed to send him CTS forms a number of times yet he did not receive these. Because of a lack of records we cannot say whether the Council did or did not send out the forms. We are also mindful it is possible the Council sent the forms but these were not delivered due to a postal issue. Therefore, on the limited evidence available, we cannot find the Council at fault. We note Mr X has since applied for CTS and found he is not eligible.
56. Mr X was satisfied with a draft of this report.
57. The Council did not provide any comments on this draft report, although we allowed it more time to do so. We are disappointed with its lack of engagement, given the significant issues we have identified.

## Recommendations

58. To remedy the injustice set out above we recommend the Council carry out the following actions:
- provide Mr X with a written apology;
  - pay Mr X £300 for distress and uncertainty;
  - reconsider Mr X's request to write off his arrears and write to him with reasons for its decision with reference to its Recovery Policy;
  - invite Mr X to apply for discretionary relief, making clear any evidence he should provide to support an application and informing him of the criteria against which it will consider his application;
  - publish a council tax discretionary relief policy on the Council's website. This should include the process for considering a request, criteria for assessing a request and notice of the right to appeal the Council's decision to the Valuation Tribunal;
  - provide training or guidance to relevant staff to ensure they inform customers of any opportunities to apply for benefits, discounts or relief and they consider such requests in line with relevant policies; and
  - remind staff of the need to provide clear information to customers about any payment plans at the outset, including how or when they will end, details of any review and warning of any further recovery action.
59. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

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## **Decision**

60. We have completed our investigation into this complaint. We find fault by the Council which caused injustice to Mr X. The Council should take the action identified in paragraphs 58 to 59 to remedy that injustice.