



London Borough of Hammersmith & Fulham

CABINET

3 MARCH 2014

Report of the Leader of the Council – Councillor Nicholas Botterill

MONITORING OFFICER REPORT TO CABINET: LOCAL GOVERNMENT OMBUDSMAN FINDING- MALADMINISTRATION CAUSING INJUSTICE (CASE No 1212460)

Classification: For Decision

Key Decision: No

Wards Affected: Palace Riverside Ward

Accountable Executive Director: Mel Barrett, Executive Director of Housing and Regeneration

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1. EXECUTIVE SUMMARY

1.1 LOCAL GOVERNMENT OMBUDSMAN FINDING – MALADMINISTRATION AND INJUSTICE (CASE No 120121460)

1.2 The Local Government Ombudsman submitted to the Council on 14th January 2014 a report with a finding that the complainant, who lives in sheltered housing which is managed by the Council, was wrongly overcharged for water, contrary to the Water Resale Order 2006. The Ombudsman concluded that this was maladministration causing injustice. A copy of the Ombudsman's report is **attached at Appendix 1.**

1.3 The last time the Council received an Ombudsman report on maladministration were in 2004 and 2010.

1.4 Local Government Ombudsman's report

Under s.5 of the Local Government and Housing Act 1989 the Monitoring Officer is under a duty to present a report to the Cabinet in the event of a finding of maladministration in respect of an executive function and the Cabinet is under a duty to consider that report. This report discharges that duty, as set out below.

1.5 Under s.5A the Cabinet is obliged to consider the report and prepare a report which specifies:

- (a) what action (if any) the executive has taken in response to the report;
 - (b) what action if (any) the executive proposes to take and when;
 - (c) the reasons for taking the action or, as the case may be, for taking no action.
- 1.6 As soon as practicable after the preparation of such a report, it must be sent to each member of the authority and the Monitoring Officer. These duties are reflected in the recommendations.
- 1.7 As required by the Act, the Head of Paid Service and the s.151 officer have been consulted in the preparation of this report.
- 1.8 In addition to the s.5 requirements, s.31 of the Local Government Act 1974 provides that where the Ombudsman reports that there has been maladministration, the report shall be laid before the authority concerned and that it shall be the duty of that authority to consider the report and, within 3 months of the date of receipt of the report, to notify the Ombudsman of the action which the authority has taken or which it proposes to take. The Ombudsman has further powers available in the event that he or she is dissatisfied with the authority's response.

2. RECOMMENDATIONS

- 2.1 That the Cabinet notes:
- (i) The Local Government Ombudsman's report, findings and recommendations and endorses the actions already undertaken by officers as a result, in particular (a) the Council prioritising arrangements to correct the system for reselling water services to residents which will be fully implemented during the current financial year; (b) the action taken by officers in July 2013 to write to all residents at Meadowbank Close who have been overcharged advising them of refund; and (c) a written apology issued.
 - (ii) That the Council has advised residents at Meadowbank Close in July 2013 that all water charges for the financial year beginning 1 April 2013 are currently being reviewed, and that these will be reset in accordance with the estimated levels of usage and cost for the remainder of the year.
 - (iii) That any difference between the amount paid to Thames Water and the amount charged to all residents will be corrected at the end of the year via an adjustment to their rent account.
 - (iv) That the officers involved in this case no longer work for the Council.
- 2.2 That, on the basis of these actions, the Cabinet takes no further action in relation to the matter for the reasons set out in the report.

- 2.3 That this report be adopted as the Cabinet's formal response as required under S5A of the Local Government and Housing Act 1989 and distributed to all Members of the authority and the Monitoring Officer.
- 2.4 That this report be adopted as the Council's formal response under s.31 of the Local Government Act 1974 and the Local Government Act 1974 and the Local Government Ombudsman be notified of the action the Council has taken.

3. REASON FOR DECISION

- 3.1 Under s.5 of the Local Government and Housing Act 1989 the Monitoring Officer is under a duty to present a report to the Cabinet in the event of a finding of maladministration in respect of an executive function and the Cabinet is under a duty to consider that report.

4. INTRODUCTION AND BACKGROUND

SUMMARY OF THE OMBUDSMAN'S REPORT

- 4.1 Miss A lives in sheltered housing provided by the Council. Miss A complained to the Ombudsman about the way the Council charges her for water use. MS A said that:

- The Council has acted unreasonably by charging her a compulsory water charge which is very expensive, rather than charging her only for the water she uses or applying the Thames Water Assessed Household Charge;
- The Council has refused to provide individual water meters even though this is what tenants have asked for and Thames Water has supported their request;
- The Council has been inconsistent about how it charges residents for water, first saying it uses the old rateable value before saying it uses a bulk water meter and divides the charge between residents; and
- Officers have been rude, obstructive and have delayed responding to her about the matter.

OMBUDSMAN'S FINDING - Maladministration and injustice

- 4.2 The Council has significantly overcharged residents for water use. The Council has also taken too long to identify the problem and clearly explain to Miss A how it has charged her for water use. The Council should have been aware of and complied with the Water Resale Order. This is fault.
- 4.3 The Council's responses to Miss A's correspondence have been inconsistent. Although Miss A did not specifically allege that the Council had been in breach of the Water Resale Order, she did allege that she was paying significantly more

for water use than would be expected and she asked the Council for a copy of its agreement with Thames Water. Miss A also said she hoped the Council was not allowed to resell water at a profit. If the Council had thoroughly investigated how it charged residents for water use in response to Miss A's initial complaint, the problem could have been identified and put right much earlier.

- 4.4 The Council is now taking action to put right the injustice suffered by Miss A and the other tenants.
- 4.5 The Council has considered Miss A's request for her own water meter. It has explained its decision that it will not install a meter. Miss A's adjusted water bills now appear to be broadly in line with the Thames Water Assessed Household Charge.
- 4.6 Miss A has complained about the conduct of some Council officers involved with her complaint. But, apart from the unsatisfactory response to her complaint, the Ombudsman finds no fault.

OMBUDSMAN'S RECOMMENDATIONS

- 4.7 The Ombudsman's recommendations are that the Council:
 - Issues a written apology to Miss A;
 - Completes the process of refunding all residents who have been overcharged;
 - Pays interest on the amount tenants have been overcharged (in accordance with section 10 (2) of the Water Resale Order);
 - Complies with the requirements of the Water Resale Order by clearly explaining to tenants how it has calculated their water rate with reference to the Order, when it issues a demand for payment;
 - Undertakes a review of how it collects water charges from Council tenants across the Borough; and
 - Pays Miss A a financial remedy of £100 for her time and trouble pursuing the matter.

5. PROPOSAL AND ISSUES

- 5.1 This report sets out the learning and actions required as a result of a finding of maladministration and injustice against the Council.
- 5.2 Principally the complainant's original complaint to the Council was not about the Water Resale Order. Rather it was concerned with repeated requests in 2007 and 2008 to H&F Homes Limited, the Arm's Length Management Organisation (ALMO) managing the council's housing stock at the time, about whether a

water meter could be installed at her property. The LGO initially found no fault in respect of that complaint and issued a provisional decision on that basis. However, during the course of dealing with the complaint, it emerged that there were issues with the process of charging for water rates.

- 5.3 In 2012/13, as part of the on-going due diligence work, officers were undertaking through the examination of old records and refining budgets following the return of the management of Council Housing to the Council from H&F Homes Ltd in April 2011. Officers identified there were issues with the water charges.
- 5.4 Principally, the Ombudsman found that following their investigation of the Council's approach to calculating the price at which water and sewerage services are resold to tenants that the Council had been overcharging residents. The investigation covers the period 1st April 2010 – 31st March 2013. The amount that should have been billed has been recalculated using the OFWAT guidelines. In summary OFWAT requires that "anybody reselling water or sewerage services should charge no more than the amount they are charged by the company". Resellers are also allowed to make a reasonable administration charge.
- 5.5 The Council will include a paragraph in the annual rent increase letter explaining that it now complies with the requirements of the Water Resale Order and stating that it does this by means of an annual reconciliation of tenants' water charges. The Council will explain in the annual rent letter that this annual reconciliation will result in another letter in September 2014 telling tenants what the reconciling charge or refund due for water is, the letter will give them 4 weeks' notice before the charge or refund due is applied to their rent accounts. This will be an annual on-going process.
- 5.6 This review is currently in progress: the Council has undertaken a comprehensive programme of Water Meter readings to ensure it receives accurate invoicing from Thames Water. At the end of 2013/14 an annual reconciliation will be carried out, tenants will be written to in September 2014 giving them 4 weeks' notice of the appropriate additional charge or refund which will then be posted onto tenants rent accounts. The Council has ensured that its new caretaking contract includes a requirement for all communal water meters to be read twice a year by caretakers to ensure it receives accurate invoices from Thames Water.
- 5.7 In addition the Council will carry out a review of its policy on water charging in 2014/15, with a view to, where it is economically feasible and will not result in large costs which would have to be passed onto tenants and leaseholders, enabling tenants to take responsibility for their own water charges. The review will test whether Thames Water is prepared to provide water meters free of charge to residents who would like them, or alternatively if not how much they would charge and in what circumstances this would be possible.
- 5.8 The officers originally involved in this case no longer work for the Council

Learning from the case

- 5.9 In combination H&F Homes Ltd and the Council took too long to respond to Miss A's legitimate concerns. The corporate complaints and compliments system now in place has clarified escalation processes and reduced the risk of such a drawn out process occurring in the future.

COUNCIL'S RESPONSE TO THE LOCAL GOVERNMENT OMBUDSMAN

- 5.10 The Local Government Ombudsman first raised the issue of the Water Resale Order with the Council on 20th March 2013. Officers investigated further and discovered that there was a communal water meter at the sheltered property in question. After some difficulties in locating the meter which was located beneath paving slabs, a meter reading was then taken by Officers. Copies of historic Thames Water bills were then obtained and the level of refund due was calculated. An apology was issued to Miss A by the Executive Director of Housing and Regeneration in his letter of 23rd July 2013 at the conclusion of the Council's internal investigation into the complaint, together with a refund returned via her rent account of £798.99. A further apology was issued again to Miss A in his letter dated 20th January 2014 following receipt of the Ombudsman's report.
- 5.11 All residents who have been overcharged at the sheltered property in question were refunded and a letter of apology issued by the Executive Director of Housing and Regeneration in July 2013. These refunds totalled £37,711.45 and were returned via a credit on tenants rent accounts. Where there is a credit on their rent account residents are able to ask for a refund to be made into their bank account.
- 5.12 In keeping with the Water Resale Order, interest has been paid via a refund on residents' rent accounts to all tenants at the sheltered properties who have been over charged, where there is a credit on their rent account residents are able to ask for a refund to be made into their bank account. All residents have received a letter to this effect dated and posted on 20th January 2014. These payments (excluding that made to Miss A) totalled £1,072.10
- 5.13 The Council will include a paragraph in the annual rent increase letter explaining that it now complies with the requirements of the Water Resale Order and stating that it does this by means of an annual reconciliation of tenants' water charges. The Council will explain in the annual rent letter that this annual reconciliation will result in another letter in September 2014 telling tenants what the reconciling charge or refund due for water is, the letter will give them 4 weeks' notice before the charge or refund due is applied to their rent accounts. This will be an annual on-going process.
- 5.14 The Council has undertaken a comprehensive programme of Water Meter readings to ensure it receives accurate invoicing from Thames Water. At the end of 2013/14 an annual reconciliation will be carried out, tenants will be written to in September 2014 giving them 4 weeks' notice of the appropriate additional charge or refund which will then be posted onto tenants rent accounts. The Council has ensured that its new caretaking contract includes a requirement for

all communal water meters to be read twice a year by caretakers to ensure it receives accurate invoices from Thames Water.

- 5.15 In addition the Council will undertake a review of its policy on water charging during 2014/15, with a view to, enabling tenants to take responsibility for their own water charges where it is economically feasible and will not result in large costs which would have to be passed onto tenants and leaseholders.
- 5.16 The £100 compensation was paid to Miss A, together with the interest payment owed of £26.20 by cheque on 20 January 2014.

6. CONSULTATION

- 6.1 The Chief Executive has been consulted about this matter. The Chief Executive endorses the early actions taken by officers and will continue to monitor the situation.

7. EQUALITY IMPLICATIONS

- 7.1 The equality implications are contained in the body of the report.

8. LEGAL IMPLICATIONS

- 8.1.1 The legal implications are incorporated in the body of the report.

9. FINANCIAL IMPLICATIONS

- 9.1 The compensation of £100 is considered appropriate and is in line with general guidance from the Ombudsman on redress. Interest has been paid to the residents of Meadowbank Close in accordance with the Water Resale Order 2006.

LOCAL GOVERNMENT ACT 2000 **BACKGROUND PAPERS**

No.	Description of Background Papers	Name/Ext of holder of file/copy	Department/ Location
No.1	Local Government Ombudsman report	Lyn Anthony Ext. 1011	Finance & Corporate Services - Executive Services. Room 229 HTH

Local Government
OMBUDSMAN

Final report

on an investigation into

12 012 460 against

London Borough of Hammersmith and Fulham

14 January 2014

Investigation into 12 012 460

against London Borough of Hammersmith and Fulham

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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

Miss A the complainant

Report summary

Housing

Miss A lives in sheltered housing provided by the Council. Miss A complains about the way the Council charges her for water use. In response to my enquiries the Council identified it had overcharged Miss A and other residents over £38,000 for water use since 2008. The Council has now issued a refund to Miss A and is in the process of issuing refunds to all residents who have been overcharged.

Finding

Fault found causing injustice.

Recommended remedy

I recommend the Council:

- issues a written apology to Miss A;
- completes the process of refunding all residents who have been overcharged;
- pays interest on the amount tenants have been overcharged (in accordance with section 10(2) of the Water Resale Order);
- complies with the requirements of the Water Resale Order by clearly explaining to tenants how it has calculated their water rate with reference to the Order, when it issues a demand for payment;
- undertakes a review of how it collects water charges from Council tenants across the Borough; and
- pays Miss A a financial remedy of £100 for her time and trouble pursuing the matter.

The complaint

1. Miss A lives in sheltered housing provided by the Council. Miss A complained to the Ombudsman about the way the Council charges her for water use.
2. Miss A said:
 - the Council has acted unreasonably by charging her a compulsory water charge which is very expensive, rather than charging her only for the water she uses or applying the Thames Water Assessed Household Charge;
 - the Council has refused to provide individual water meters even though this is what tenants have asked for and Thames Water has supported their request;
 - the Council has been inconsistent about how it charges residents for water, first saying it uses the old rateable value before saying it uses a bulk water meter and divides the charge between residents; and
 - officers have been rude, obstructive and have delayed responding to her about the matter.

Legal and administrative background

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
4. The Ombudsman may investigate matters coming to her attention during an investigation, if she considers that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E*)
5. Where a resident does not have a water meter, a water company may charge the resident for water or sewerage services based on the rateable value of their property. A water bill based on the rateable value of a property will not reflect the number of people in the property or the amount of water used.
6. The Water Resale Order 2006¹ sets out the rules by which a landlord may charge a tenant for water or sewerage services where the tenant does not pay the water company directly. The Order says anybody who resells water must not charge more than the amount they are charged by the water company. The Order sets out how a water reseller may calculate the maximum water charge for a property. Where there are a number of properties receiving water services and there are no water meters, the Order says the reseller should share the bill from the water company between the purchasers using one of the following methods:
 - Equally between the purchasers;
or in proportion to the:
 - Number of people living in each property;

¹ The Water Resale Order 2006 is a non-statutory order made by the Water Services Regulation Authority (OFWAT) under s150 of the Water Industry Act 1991.

- Rateable value of each property;
 - Total floor space of each property;
 - Number of bedrooms in each property; or
 - One half of the bill calculated on the number of purchasers (method 1) and the other half calculated on any one of the other methods (2-5).
7. Thames Water uses an Assessed Household Charge to bill residents for water usage where a water meter cannot be installed. Thames Water places each property in a band based on the number of bedrooms in the property, or by using a single occupier tariff if the resident lives alone.

How we considered this complaint

8. I have considered Miss A's letter of complaint and the supporting documents she sent. I have discussed the issues with her. I have made enquiries to the Council and considered its responses. I have also considered the comments of Miss A and the Council in response to a draft of this report.

What happened

9. Miss A moved into her current property in 2007. The property is sheltered housing for residents over the age of 60 and is managed by the Council. The property is one of a group of 63. After moving into the property Miss A found out that individual water meters were not fitted for each property. As she felt she was paying too much for water, in 2007 and 2008 she asked the Council if it could install individual meters as part of a proposed improvement programme. Miss A says the Council did not respond to her letters.

The Council's complaints procedure

10. In April 2010 Miss A complained to the Council that the yearly water charge of £332.80 was far higher than the Thames Water Assessed Household Charge (£175). She also asked the Council to allow Thames Water to install a water meter at her property.
11. In its response at stage 1 of its complaints procedure, the Council said:
- there are two bulk water meters which assess water usage for the whole block. The meters are read quarterly and the charge is equally levied across the properties in the block; and
 - according to Thames Water, it is not possible to fit an individual water meter for Miss A's property.
12. Miss A escalated her complaint and also asked the Council for a copy of its agreement with Thames Water with regard to water charges. The Council responded at stage 2 of its complaints procedure in June 2010. Miss A says she did not receive the letter until May 2011. The Council partially upheld the complaint and said:
- the stage 1 response contained incorrect information;
 - the properties are served by a communal water meter. The Council's policy has been to charge residents exactly what would have been paid to Thames Water

when all costs were based on the rateable value of properties. The Council has continued to charge all tenants based on the rateable value. It would be administratively impractical to charge some customers using another method e.g. recharging customers monthly or based on individual consumption;

- the rateable value for Miss A's property is above average. Therefore a higher than average charge is in line with this property value;
- the Council does not have a policy for installation of water meters in blocks and such a policy is needed; and
- Thames Water will inspect Miss A's property to see if it can fit an individual water meter.

13. Miss A asked the Council to respond at stage 3 of its complaints procedure. Miss A again asked for a water meter and if this was not possible for the Council to charge the Thames Water Assessed Household Charge for a one person household. Miss A also commented that she hoped the Council did not have the right to resell water at a profit.

14. In December 2011 the Council wrote to tell Miss A:

- Thames Water cannot install a single water meter for her property.
- Thames Water said the only alternative is for the Council to install its own private sub-meter for Miss A's property. The Council had passed the correspondence to an Assistant Director to consider whether a sub-meter can be installed.

The Council's responses to my enquiries

15. In its response to my initial enquiries about the complaint the Council said it:

- had no policy for the installation of individual water meters in blocks;
- is not possible to install a meter at the property; and
- was satisfied it has charged Miss A for water usage in accordance with its policy.

16. In its response to my further enquiries, in which I made specific reference to the Water Resale Order, the Council said:

- it has re-examined how it charges this group of residents for water;
- there is a communal water meter from which it has established it has charged residents more than it has been charged by Thames Water;
- it has not been possible to confirm how resale prices have been calculated historically. It is likely water resale prices were primarily based on the rateable value of each property then inflated by the water companies' published planned annual increases. But, unfortunately the estimates have not matched the actual bills and the Council has charged residents more than it has paid Thames Water;
- the most appropriate way to calculate the maximum resale price is to divide the total water bill in proportion to the rateable value of each property;
- it has written to tell all 58 tenants who were overcharged the amount they are owed for overcharged water rates between 1 April 2008 and 31 March 2013;
- it is in the process of refunding all affected tenants for this period and it will issue a further refund for 1 April 2013 to 31 March 2014 at the end of the financial year;

- it overcharged Miss A £798.99 between 1 April 2008 and 31 March 2013, and it has issued a refund to Miss A for this period;
 - in total, it has overcharged tenants over £38,000 between 1 April 2008 and 31 March 2013;
 - it is prioritising arrangements to correct the system for reselling water services to residents and this will be fully implemented during the current financial year; and
 - it could not have reasonably identified the error sooner, given the content of the complaints, the time taken between letters and its interactions with Thames Water.
17. The Council also said it will not install a private sub-meter for Miss A's property. This is because it would not be reasonably practicable to isolate the individual flats from the communal services which are linked to the domestic water supply.

Findings

18. The Council has significantly overcharged residents for water use. The Council has also taken too long to identify the problem and clearly explain to Miss A how it has charged her for water use. The Council should have been aware of and complied with the Water Resale Order. This is fault.
19. The Council's responses to Miss A's correspondence have been inconsistent. Although Miss A did not specifically allege that the Council had been in breach of the Water Resale Order, she did allege that she was paying significantly more for water use than would be expected and she asked the Council for a copy of its agreement with Thames Water. Miss A also said she hoped the Council was not allowed to resell water at a profit. If the Council had thoroughly investigated how it charged residents for water use in response to Miss A's initial complaint, the problem could have been identified and put right much earlier.
20. The Council is now taking action to put right the injustice suffered by Miss A and the other tenants.
21. The Council has considered Miss A's request for her own water meter. It has explained its decision that it will not install a meter. Miss A's adjusted water bills now appear to be broadly in line with the Thames Water Assessed Household Charge.
22. Miss A has complained about the conduct of some Council Officers involved with her complaint. But, apart from the unsatisfactory response to her complaint, I find no fault.

Conclusions

23. The fault I have identified at paragraphs 18-19 has caused injustice to Miss A and to others.
24. The main injustice suffered by Miss A has been put right by the Council paying her a refund. But, in addition, I recommend that the Council:
- issues a written apology to Miss A;
 - completes the process of refunding all residents who have been overcharged;

- pays interest² on the amount tenants have been overcharged (in accordance with section 10(2) of the Water Resale Order);
- complies with the requirements of the Water Resale Order by clearly explaining to tenants how it has calculated their water rate with reference to the Order, on each occasion it issues a demand for payment;
- undertakes a review of how it collects water charges from Council tenants across the Borough; and
- pays Miss A a financial remedy of £100 for her time and trouble pursuing the matter.

A handwritten signature in black ink, appearing to read 'J Martin', with a horizontal line underneath.

Dr Jane Martin
Local Government Ombudsman

² simple interest on that amount at the rate of twice the average base rate of the Bank of England which was applicable during the period in respect of which the excess is calculated shall be recoverable by the Purchaser from the Re-seller to whom he paid the charge.