



Title: **Report on an Investigation into Complaint No 10 002 564
Against Torbay Council**

Public Agenda Item: **Yes**

Wards Affected: **All Wards in Torbay**

To: **Adjourned Annual Council** On: **16 May 2012**

Contact Officer: **Anthony Butler**

☎ Telephone: **7155**

✉ E.mail: **anthony.butler@torbay.gov.uk**

1. What we are trying to achieve

- 1.1 Following a complaint from Mr Castle (a false name used by the Ombudsman in their reports) to the Local Government Ombudsman, a finding of maladministration causing injustice has been found against the Council.
- 1.2 The Ombudsman report is required to be reported to the Full Council.

2. Recommendation(s) for decision

- 2.1 **That the contents of this report and its appendix be noted and that the Chief Executive be requested to respond on behalf of the Council to the Local Government Ombudsman in consultation with the Mayor and Group Leaders**

3. Introduction and History

- 3.1 The Local Government Ombudsman received a complaint that the Council took bankruptcy proceedings against the complainant in response to a Council Tax debt of £2,248 without having proper regard to the personal circumstances of the complainant..
- 3.2 In the initial report dated 4 May 2011 the Ombudsman concluded that the Council had not followed due process in making Mr Castle bankrupt. The Ombudsman found the Council failed to document its decision making in respect of the recovery action by way of bankruptcy and failed to reconsider its decision to pursue bankruptcy when information came to light that Mr Castle might be considered suicidal. As such the Ombudsman considered that had such failings not occurred the Council would not have continued with the bankruptcy proceedings against Mr Castle and he would not have incurred the high punitive costs of £24,000 associated with that action.

- 3.3 The Local Government Ombudsman's initial report was presented to Full Council on 13 July 2012 and on 12 August 2012 the Chief Executive responded to the Ombudsman and Mr Castle to inform them of the decision not to pay the compensation recommended by the Ombudsman. The letter to Mr Castle offered a payment of £1,000 in recognition of the Council's maladministration in its failure to keep full records.
- 3.4 On 16 November 2011 the Local Government Ombudsman and her deputy met with the Chief Executive, the Mayor and the Executive Head Commercial Services to discuss the Council's response to the Ombudsman's initial report. On 25 January 2012 the Ombudsman sent a letter to the Council upholding the original decision. The Chief Executive responded on 14 February 2012 with further comments.
- 3.5 The Council has now received the further report on the complaint dated 28 March 2012 upholding the original decision and asking the Council to reconsider its decision to not to pay the compensation recommended in the original report which is the reason for this report being brought to full council.
- 3.6 The original and this further report have been considered in detail by the Executive Head of Commercial Services. She does not believe that the Ombudsman has sufficiently appreciated the points made within our letter of 14 February 2012. In particular, it is believed that the Ombudsman has failed to fully appreciate s.1(2) of the Mental Capacity Act 2005 which provides that a person must be **assumed to have capacity unless it is actually established that they lack capacity**. The Council, through its agents made extensive efforts to contact Mr Castle. Whilst some of these visits raised a level of concern as to Mr Castle's wellbeing there was no evidence that actually established that he lacked capacity. Guidance and legal commentary on the Mental Capacity Act make repeated reference to the fact that it must not be assumed that a person lacks the mental capacity needed in any given situation just because, for example, the person has a disability or mental health problem. In the absence of actual evidence that Mr Castle lacked capacity, and in accordance with the legal position as set out above the Council had to proceed on the basis that Mr Castle had capacity to manage his property and affairs. Whilst there was a level of concern raised as to Mr Castle's wellbeing, these did not amount to an evidential basis upon which the Council could have made a decision to write off the debt. The Council commenced bankruptcy proceedings, and to have done otherwise would not have been fair to the other residents of Torbay.

For more detailed information on this proposal please refer to the supporting information attached.

**Anthony Butler
Monitoring Officer**

Supporting information

Appendices

Appendix 1 –

Local Government Ombudsman's Report dated 4 May 2011

Letter to Local Government Ombudsman from the Chief Executive dated 12 August 2011

Letter from Local Government Ombudsman to the Council dated 25 January 2012

Letter to Local Government Ombudsman from the Chief Executive dated 14 February 2012

Local Government Ombudsman's further report dated 28 March 2012