

**Please reply to: Elizabeth Raikes**  
Chief Executive,  
Town Hall, Torquay. TQ1 3DR

Mr Neville Jones,  
Deputy Ombudsman,  
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**My ref:** ER/SU  
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**Date:** 14 February 2012

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Dear Mr. Jones

### **COMPLAINT BY MR CASTLE**

Thank you for your letter of 25 January 2012 and for the opportunity of explaining to you and the Ombudsman the position of the Council in respect of this complaint at our meeting on 16 November 2011.

It is however clearly disappointing that the Ombudsman was not persuaded on any of the points discussed at our meeting. Within your covering letter you record our strength of feeling on this case and that strength of feeling has not lessened in the time since our meeting. Whilst I appreciate that further representations are unlikely to persuade the Ombudsman at this juncture I believe that it is important for the Council to make the following points:

1. At paragraph 15 the report states “there is no evidence that Mr [Castle] was capable of dealing with his own affairs.” With the greatest of respect to the Ombudsman any reliance on this statement is incorrect in law. Section 1(2) of the Mental Capacity Act 2005 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 including 18 personal visits. 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.

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In the absence of actual evidence that Mr Castle lacked capacity, in accordance with the law as set out above the Council had to proceed on the basis that Mr Castle had capacity to manage his property and affairs.

2. Further in paragraph 15 there is reference to the LGO Focus Report on the use on bankruptcy for Council Tax debts and the guidance within the same that reasonable efforts should be made to 'gather sufficient evidence about the debtor's personal circumstances and considering whether those circumstances warrant them being protected from recovery action.'

In this case it took over 2 years to the point when bankruptcy was used by the Council to recover the debt owed by Mr Castle. There were significant attempts to engage Mr Castle within this time. Mr Castle did not engage to provide any information which the Council could have used to consider whether his individual circumstances warranted protection from the recovery action. Enquiries with Adult Social Services evidenced that he was unknown to them, and the provisions of the Data Protection Act 1998 (in respect of the protection of personal sensitive information) meant that it would be unlawful for professionals such as the G.P. to provide information as to Mr Castle's circumstances without his consent.

Again with respect, it is our belief that the Ombudsman is misguided in her expectation of the Council in these specific circumstances, as there was no other information that the Council could have obtained to feed into a review of the case prior to the bankruptcy proceedings being instigated, given Mr Castle's lack of engagement.

The suggestion that a visit by one of the Council's Officers to the property would have borne greater success in eliciting further information than the 18 visits by our agents, is in our respectful view totally speculative. Rather there is an evidential basis to support the view that such a visit was unlikely to have established any contact with Mr Castle. In this case Mr Castle had been offered the opportunity of a meeting on many occasions, it is not the fault of the Council that he failed to engage.

As I have referred to above, it took the Council over 2 years of trying to engage with Mr Castle before bankruptcy was pursued to recover the Council Tax debt. It is implicit within the Report that the Ombudsman believes that this period was not long enough. From my perspective there has to be a point at which the Council concludes that further attempts are likely to be futile. At that point in the absence of actual **evidence** of a lack of capacity, or other situation which would indicate such proceedings were not appropriate, the Council is duty bound to seek to recover the debt in fairness to the other residents of Torbay.

We tried for over two years to engage Mr Castle, however he chose not to respond. Given this lack of engagement and the fact that his property was unregistered, it was not legally possible for the Council to pursue a Charging Order. Having already decided not to pursue Mr Castle's committal, the only available options for the Council was to write off the debt or pursue the bankruptcy. At the time we did not believe that it was appropriate to write off the debt, and with the benefit of the knowledge of subsequent events, we remain of the same view. Therefore bankruptcy was the only appropriate course of action, and one which I firmly believe that we should not be criticised for pursuing.

I can confirm that when we have your final report this will be presented to a meeting of the Full Council for their consideration.

Yours sincerely,

A handwritten signature in black ink that reads "Elizabeth Raikes". The signature is written in a cursive style with a large initial 'E'.

Elizabeth Raikes  
**Chief Executive**