

Section A: Commercial

A1: Lease of property

Misfiling of documents – bankruptcy

1. Mr Birch, a solicitor, complained on behalf of his client, Mr Charles, that fault by a council in the filing of a legal document relating to the lease of business premises from the council led to Mr Charles being made bankrupt by mistake.

What happened

2. Mr Charles leased business premises from the council in 1975. In 1977 the council agreed that he should be released from all future liability for that lease. The agreement was given by a licence to assign.
3. The correspondence about this was not put on the council's file for the property but was put on a file for different premises leased by Mr Charles. But the licence to assign was itself correctly filed in the deed packet for the relevant premises. However, it appeared that when the licence was inspected in 1989 it was not put back in the deed packet but was put on a file.
4. In 1993 the council decided to seek recovery of the outstanding rent from the original lessees, but the licence to assign, which included the release of Mr Charles from liability for the lease, was not in the deed packet for the property. Mr Charles had not kept a record of the release, and solicitors he instructed at the time did not support his recollection that a release had been granted.
5. The result was that the council pursued Mr Charles for a debt he did not owe and he was made bankrupt in 1995.
6. It was not until 1996, when he appointed a new solicitor, that further enquiries of the council prompted a more thorough research of the records and the solicitor was able to prove that

Mr Charles was not liable for the debt. The bankruptcy order was then annulled.

7. The Ombudsman said that this was a case where simple administrative mistakes had far reaching effects for Mr Charles. The Ombudsman commented:

"Any filing or recording system operated by a council should be sufficiently robust to ensure that it is effective for dealing with everyday but vitally important transactions such as arose in this case."

Injustice

8. Mr Charles sought compensation from the council for legal costs, loss of profits, and psychological injury attaching to the proceedings against him for bankruptcy, a total of £85,000.
9. The Ombudsman said that if the maladministration had not occurred, the bankruptcy proceedings might well have been avoided. But Mr Charles should have been aware of the importance of keeping a copy of the licence to assign and relevant correspondence. He contributed to his own misfortune and it was possible that his earlier legal advisers might also have done so since they did not pursue his interests with the same diligence and acuity as Mr Birch.
10. In the circumstances the Ombudsman did not recommend the council to pay the amount suggested by Mr Charles. But the Ombudsman considered that the injustice was substantial and recommended the council to pay £15,000 as a contribution to Mr Charles' financial losses and costs, together with a further £5,000 for his distress.

(Report 97/B/4305)

A2: Social club

Licences – work required – specification changed after purchase

1. Mrs Emerson complained that a council gave her wrong advice about work required to a property in order for a public entertainment licence to be awarded.

What happened

2. Mrs Emerson and her business partner decided to buy a building for use as a private members' social club and a public entertainments room. The entertainments room was intended as a music room for folk and jazz nights.
3. Mrs Emerson said she wished to proceed with the purchase only if it could be established that the necessary licences would be granted. She obtained a licence to use a fruit machine as well as a licence to operate as a private members' social club. However, she could not obtain a public entertainment licence without ownership of the premises.
4. Mrs Emerson therefore asked the council to tell her what work was required to ensure the grant of such a licence. Her electrician took advice from an environmental health officer and sent the council a copy of the specification incorporating that advice. Mrs Emerson and her partner purchased the property.
5. The environmental health officer visited the property on a number of occasions while the work was in progress. When that officer retired, his work was taken over by an architectural services officer who also inspected the work in progress.
6. After the premises were opened to the public, the architectural services officer

said that further work was required. Mrs Emerson's electrician estimated that the additional work would cost at least £10,000 on top of the £1,000 which had already been spent. Mrs Emerson could not afford the additional work and was not able to use the entertainments room for the purpose for which it was intended.

Conclusion

7. The Ombudsman was satisfied that Mrs Emerson was given incorrect advice by the council about the work required to the building in order to obtain a public entertainment licence. That was maladministration. If the council had advised her properly at the right time, she could have decided whether or not to proceed with the purchase.
8. The Ombudsman did not think it was reasonable to hold the council responsible for the loss of value of the property or all the lost profits, as many factors could have had an influence on those. But an injustice had been caused to Mrs Emerson. The Ombudsman recommended that the council should pay her an amount sufficient to cover what it would cost to provide an approved electrical installation to the property (to be determined by a contractor independent of the council) together with £1,000 for her inconvenience and disappointment in failing to realise her business plans and the time, trouble and expense involved in pursuing her justified complaint.

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