OmbudsmanSA

STATEMENT ON FORMAL RESOLUTION

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Unreasonable debt recovery action taken against people experiencing financial hardship

Essential Insights

This matter highlights that decisions affecting individuals suffering financial hardship must be made by agencies in a fair manner, based on consideration of individual circumstances, and in accordance with relevant policies and legislation.

RATES RECOVERY

In April and May 2026, the Ombudsman received seven complaints from accredited financial counsellors on behalf of ratepayers of a council.

In all of these complaints the financial counsellors had confirmed that financial hardship existed, and what appeared to be reasonable payment arrangements or options had been proposed to the council. In all of the cases the council nevertheless proceeded with the debt collection process.

The Ombudsman acknowledged that councils require income to provide an extensive range of services to the community and receive this income from various parties, including ratepayers. The Ombudsman also acknowledged councils' obligations to enforce payments of rates and that this is critical to the ongoing functioning of local government. However, the Ombudsman was concerned that the council may have acted unreasonably in relation to its recovery of overdue rates from vulnerable citizens who were experiencing hardship.

The Ombudsman formed the view that the council had likely erred by:

- failing to consider each case of potential financial hardship on its merits

- failing to properly consider reasonable payment proposals, options or recommendations from the financial counsellors in cases where vulnerable people were experiencing extreme financial hardship
- failing to correspond with the financial counsellors in relation to matters that had been sent to debt collection agencies
- declining proposed payment arrangements on the grounds of hardship before the hardship applications had been considered and assessed
- forwarding matters to debt collection agencies before it had formally considered the submitted financial hardship applications
- forwarding matters to a debt collection agency when a financial counsellor had proposed reasonable payment options that would clear the debts and avoid future debts
- requesting payments that were not affordable or reasonable
- refusing to enter into any payment arrangements that would extend past 30 June 2027, even in cases where the amount of time after this date was not unreasonably lengthy
- failing to reply to correspondence from the ratepayers or the financial counsellors about these issues
- causing undue stress to vulnerable people by advising them that their properties would be sold, while the financial counsellors were working with them and attempting to liaise with the council.

KEY OUTCOMES FOLLOWING THE OMBUDSMAN'S ASSESSMENT

The Ombudsman contacted the council, which acknowledged that errors had occurred, and took immediate action in response. The council particularly acknowledged that repayment arrangements extending beyond 30 June 2027 may be reasonable in circumstances where the arrangements appropriately address both ongoing rates and arrears over time and agreed to reassess cases on their individual merits.

The Ombudsman accepted the council's advice that staff had acted in good faith, and that the council was attempting to avoid circumstances ever reaching the point where the statutory sale provision would need to be considered. However, the council's approach did not account for the fact that hardship matters require different management approaches from standard debt recovery matters, and that legal considerations surrounding hardship, statutory recovery and processes under section 184 of the *Local Government Act 1999* form part of a separate legal process framework.

The council advised the Ombudsman that, as a result of these issues being identified, it had already arranged further training of staff to urgently address the issues raised. The council also advised that it had taken the following additional immediate action:

- paused the debt recovery processes for the seven identified cases while the matters were being reconsidered
- temporarily ceased the accruing of interest and penalties for the seven identified cases while the matters were being reconsidered

- commenced reconsidering all of the proposals from the financial counsellors in relation to the seven cases as matter of priority
- commenced identifying and reviewing all hardship applications, and correspondence from people relating to difficulties with rates payment, and to taking the above actions in relation to any similar cases.

Given the council's commitment to promptly act in response to the issues raised, the Ombudsman decided to resolve this matter by way of formal resolution. This involved the council agreeing to the following actions in addition to those above:

- reviewing its operational debt recovery practices to ensure:
  - hardship matters are managed consistently with statutory obligations and council policy
  - escalation pathways are appropriate to the circumstances of each case, and
  - communications and processes align with the intended legislative framework.

- reviewing its debt recovery templates, correspondence and operational documentation in consultation with its legal representatives, to ensure any necessary adjustments or improvements are identified and implemented.