



Grant Thornton

An instinct for growth™

Reverend Nicolson
93 Campbell Road
London
N17 0BF

12 October 2015

Grant Thornton UK LLP
Grant Thornton House
Melton Street
London NW1 2EP

T +44 (0)20 7383 5100

www.grant-thornton.co.uk

Dear Reverend Nicolson

Decision and statement of reasons on your objection to the accounts of London Borough of Haringey Council for the year ended 31 March 2014

I am writing to advise you of our decision on your objection to the accounts of London Borough of Haringey for the year ended 31 March 2014.

Your objection

Your objection to the accounts for the year ended 31 March 2014 is set out in your letter of 19 September 2014 and was further clarified in our meeting on 6 June 2015.

In summary the grounds of your objection are that in your view:

- the costs for summonses and liability orders imposed by Tottenham Magistrates at the request of Haringey Council in respect of the 2013/14 accounts are contrary to law as they are higher than costs actually incurred by the Council.
- the residents of Haringey have been penalised by more than a genuine and rational contribution to costs of Council Tax summonses and liability orders paid by all late and non-payers of council tax in 2013/14.

You have asked us to apply to the court for a declaration that the costs for summonses and liability orders in the London Borough of Haringey's 2013/14 financial statements are contrary to law. You have also asked us to consider whether we should make a report in the public interest under section 8 of the Audit Commission Act 1998.

In summary you consider that we should make a report for the following reasons:

- the costs which may be reasonably included in a calculation to support the level of costs and what methodologies may reasonably be used need to be clarified;
- there is variation in the costs claimed by different authorities and the reasons for this require a wider review;

- there have been significant failings in internal controls and economy, efficiency and effectiveness have not been achieved.

Background

The Council, in 2013/14, sought to reclaim costs in respect of summons issued for non-payment of council tax of £125 per case.

A liability order is essentially a demand for payment of the full amount of council tax outstanding which has been endorsed by a court. An application for a liability order is initiated by the Council asking the Magistrates' Court to issue a summons to the person to appear before the court to explain why the relevant sum has not been paid.

Regulation 34(5) of the 1992 Council Tax (Administration and Enforcement) Regulations 1992 ('the 1992 Regulations') provides that the Council shall not proceed with the application if it is paid the amount outstanding specified in the summons together with an amount equal to the costs reasonably incurred by it in connection with the application up to the time of the payment.

Regulation 34(7) of the 1992 Regulations provides that an order made by the Court shall include a further amount equal to the costs reasonably incurred by the applicant in obtaining the order.

You sought Judicial Review of the actions of the Magistrates' Court in passing on to you the Council's costs in a liability order hearing on 2 August 2013. The Judicial Review and subsequent order of 11 May 2015 concluded that in the circumstances which arose on 2 August 2013:

- i) the Magistrates did not have sufficient relevant information before them to reach a proper judicial judgement of whether the costs claimed represented the costs reasonably incurred by the Council in obtaining the liability order;
- ii) the Magistrates erred in law by failing to make enquiries into how the £125 was computed and what elements comprised; and
- iii) you were denied a fair opportunity to challenge the lawfulness of the order before it was made, by reason of the failure to answer your requests for the provision of information as to how the sum of £125 was arrived at.

The Honourable Mrs Justice Andrews stated "this claim does not involve any consideration of whether the sum of £125 was in fact reasonably incurred by the Council in obtaining the order; the scope of my investigation is confined to examining whether it was lawful for the Magistrates to conclude that it was, in the circumstances in which they did. I do not need to say anything more about how the Council reached its figure of £125 in order to reach a conclusion on that issue".

Work carried out

In the course of our enquiries we have considered:

- the written and oral submissions of both you and the Council
- relevant legal advice obtained by the Council
- relevant statute and case law, including the outcome of the Judicial Review;
- the results of our investigations into various matters relating to your objection.

Total costs calculated in accordance with the Regulations

Regulation 34(7) of the Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992 No.613) states that when granting a liability order the court shall make an order reflecting the aggregate of the sum of an amount equal to the costs reasonably incurred by the applicant in obtaining the order.

The Judicial Review of 6 May 2015 is clear that there needs to be a clear basis for the costs. The Council therefore needed to undertake a costing exercise to arrive at an amount which equals the costs reasonably incurred in connection with the application up to time of payment or in obtaining the order. The Council provided us with their calculation on 2 December 2014. The calculation provided to us by the Council resulted in the cost per case of issuing a summons for 2013/14 was £130.77, but has sought to recover £125.

Mrs Justice Andrews reasoning in paragraph 45 of her judgement is that it would not be practical for the Council to carry out and provide a detailed calculation of the actual costs incurred in each and every case. Therefore, the exercise has been completed by costing of a standard average case.

The Council has provided us with their calculation of costs to support the charge of £125 per summons issued.

The Council has determined that these costs have been incurred from the point of non-payment of Council tax. At the point of non-payment of Council Tax the Council commences enforcement actions that in some cases lead to the issuing of the summons.

As Mrs Justice Andrews pointed out in her judgment (paragraph 9 repeated at paragraph 36): "Since the question whether the costs claimed in this case were "reasonably incurred in obtaining the liability order" is not a matter I have to decide and I have not heard argument on it, it seems to me that I should be circumspect in any observations that I make which

could have a bearing on that issue should it arise on a future occasion. On the other hand, there are no authorities that specifically address these Regulations, and this is an opportunity for the Court to afford some general guidance as to their interpretation and scope.”

Mrs Justice Andrews further stated that including the costs of issuing a final notice could arguably be justified in cases where a summons is issued, “because they are a compulsory step without which the application for a summons against that respondent cannot be made. On the other hand, it would be difficult (if not impossible) to establish the necessary connection between the enforcement process and costs incurred by a local authority in the normal course of events, such as the costs of sending out reminder notices to taxpayers.”

We note that Mrs Justice Andrews’ comments should be viewed as general guidance on the interpretation and scope of the Regulations, but do not constitute a binding statement of the law, and should therefore be treated with some caution. With this in mind, we also note that her comments may mean that in law, some part of the early stages of the reminder process, perhaps prior to taking a decision to enforce through the courts, should not be included within the costs of the summons.

The Council has pointed out however that relevant to this issue is regulation 23 of The Council Tax (Administration and Enforcement) Regulations 1992 which deals with the failure to pay by instalments. That regulation states that if someone fails to pay the amount on a reminder notice then they lose the right to pay by instalments and the full amount becomes due. Regulation 34(1) provides that where an amount which has fallen due under paragraph (3) or (4) of regulation 23 (including those paragraphs as applied by regulation 28A(2)) is wholly or partly unpaid, the billing authority may apply to a magistrates’ court for an order against the person by whom it is payable. Regulation 33(3) confirms that the service of a final notice is not required in the circumstances mentioned in regulation 23(3) (and as applied by regulation 28A(2)). Therefore in such cases the first reminder notice is, in fact, the “final” notice that a debtor would receive before a summons is issued. On this basis the Council may be empowered to include within the costs of issuing a summons to such people the costs of the reminder stages.

Costs which are not recovered through this process are met by all Council tax payers in the area in subsequent years.

Given the lack of definitive case law regarding the interpretation of “reasonably incurred in obtaining the liability order”, we do not consider it appropriate to reach a conclusion on the lawfulness of the charge. However, even if we were to conclude that the Council’s inclusion of the costs of first and second reminders rendered the income unlawful, we would not exercise our discretion to apply to the Court for a declaration

under section 17(1) of the 1998 Act to that effect (see below for our reasons).

In our opinion the apportionments contained within the calculation that the Council has provided us were not always sufficiently supported by robust evidence and contain elements of subjective judgement. This means that we are not able to agree the £125 summons charge exactly. In our opinion the Council has adopted an approach which is aimed at excluding costs not associated with a summons and whilst the basis would ideally be less subjective there is no evidence to suggest that the Council is deliberately apportioning inappropriate costs to increase the fee charged on summonses as a means to increase the income they receive from charging these costs. We are satisfied that the Council has not set out with any intention to raise income to cover other General Fund expenditure. The Council's approach is to aggregate the relevant employees costs, direct costs, indirect costs and overheads that result from the processes carried out that lead to the issue of a summons. The Council then divides the total aggregated costs by the summons issued to obtain the cost per summons.

Importantly, the Council's calculation **does** reflect the normal categories recognised by the Chartered Institute of Public finance and Accountancy i.e. staff costs, direct costs, indirect costs and overheads. We have reviewed the Council's calculation which results **in a total cost of £130 for which they have chosen to re-charge £125**. We set out our findings under the relevant headings below.

Staff costs – Total £914,400 representing 27% of the overall cost

The Council has provided a list of all the employees that work in the Council Tax section together with their pay National Insurance and employers pensions contributions that total £1,524,000. The Council apportioned 60% of staff time to the costs associated with issuing a summons. These costs are apportioned based on the Council's estimate of staff time in completing the following tasks:

- Issuing reminders and dealing with associated queries 11%
- Issuing 2nd reminders and dealing with associated queries 13%
- Issuing final notices and dealing with associated queries 16%
- Checking pre-listing summons cases against computer records for each case 19%
- Court officer preparing and making application for summonses 1%

The Council only recover the costs on cases associated with issuing a summons. The Council do not and are not allowed to add in costs associated with recovery actions in relation to non-payers who are not summonsed. The council has been clear about differentiating costs across the four broad categories of Council Tax Payers.

1) those that pay with no issues

- 2) those who pay with some action but before summonses point
- 3) those costs and activities that are unrelated to summons processes e.g. annual billing
- 4) those costs that relate to work involved in issuing a summons where the summons takes place.

The Council's apportionment of costs is based on the average time staff spent on the enforcement process. This is a judgement by the Council as Council Tax staff are involved in roles associated with valuation, billing, collection and enforcement. Staff do not complete timesheets and there is no detailed analysis of the time taken performing different roles that is available to support the Council's calculation.

The Council has provided a flow chart of the recovery process and evidence of a few case files that suggest that the percentages used are not unreasonable. The time spent by staff on cases increases as the enforcement goes through the various stages. At its very basic level the number of summonses are around a third of dwellings so if all activities were equally intensive then a third of costs would be apportioned. However, as the work effort is significantly higher than for a "normal taxpayer" situation and so this increased effort does not appear unreasonable. e.g. double the time spent. i.e. 60%

The pre listings of summons cases are checked against the Council's document system Comino and Council Tax system Northgate. This search involves looking for any outstanding queries, documentation and any potential changes that impact on whether the action should proceed. We have witnessed that this is a timely process and explains why a large proportion of time is allocated to this task.

The initial stages of billing and administration include updating of Council Tax accounts, application of discounts and handling initial individuals queries is less time resource intensive and the Council estimates that staff spend approximately 15% of their time on this work which does not appear unreasonable. Intuitively the early administration stages will be less expensive as they are computer generated.

The Council estimates that 25% of staff time is spent post summons. This includes costs of insolvency and charging orders and these are excluded from the Council's calculation.

The Council has not sought to apportion costs using a methodology that precisely apportions costs to the various stages of Council Tax administration nor is it required to do so. The Council has not provided a sufficient detailed analysis to support the exact apportionment of staff costs to the issuing of the summons. However, from our understanding of the processes that staff undertake there is no evidence that the Council are significantly overstating the costs apportioned to issuing of a summons.

Direct costs Total £192,800 representing 6% of overall cost

The Council has provided an analysis from their financial ledger to support the direct costs which total £240,768. 80% of these costs are apportioned to the cost of issuing a summons. The largest elements of these costs are agency costs £116,319 and printing costs £113,953.

The Council has provided a list of agency staff utilised with supporting evidence for costs and apportionment of their time working for the Council Tax section.

The printing costs relate to contractual costs provided by an external supplier employed in respect of all general printing of notices to customers.

The Council's judgement is that 80% of these costs are recharged to summons as the vast majority relate to costs incurred at reminder, final notice, and summons stages. These are only the costs that relate to cases that end in a summons being issued. However, no detailed apportionment analysis has been provided by the Council to support the accuracy of the 80%. Our judgement is that the costs incurred appear reasonable, but the Council needs to undertake a more detailed review of basis for using an apportionment of 80% for agency costs and printing costs.

In respect of agency costs we would have expected the apportionment of agency staff time to have been undertaken on a similar basis to that of other staff costs at 60% given that roles are likely to be similar. We would also expect that the majority of the printing costs would relate to the initial billing stage and not from issuing reminders and other correspondence to residents as part of the enforcement process. Removal of all printing costs and apportioning agency staff at 60% reduces the cost down to £126.36 which is still above the charge of £125.

Indirect costs Total £361,600 representing 11% of overall cost

The Council has provided an analysis from their financial ledger to support the indirect costs which total £451,928. The largest elements of these costs are court fees £59,059, legal fees £118,819, postage £172,213 and IT maintenance of £33,269.56.

The Council's judgement is that 80% of these costs are recharged to summons as this relates to costs at reminder, final notice and summons stages. However, no detailed apportionment analysis has been provided by the Council to support the accuracy of the 80%.

We would expect that all court fees and the majority of legal fees would be apportioned to summons costs. The apportionment of postage costs appears high given that 26,061 summons were issued in 2013/14 which

equates to a cost of posting reminders, final notices and summons costs of £6.61 per case.

Overheads Total £1,165,200 representing 34% of overall cost

The Council's apportionment of overheads are in line with the Council's Corporate Overhead allocation methodology, which uses various drivers for apportionments based on their relevance in respect of each corporate function. The costs agree to the Council's RO forms and financial ledger system and the key drivers behind the apportionment are appropriate. Inclusion of overheads within the calculation is, in our view, appropriate in the absence of any specific statutory requirement to exclude them, as they are part of the costs reasonably incurred by the Council in connection with the application.

Total overheads of £1,942,374 are allocated to the Council Tax services on this basis and from this total £1,165,000 is apportioned to the cost of issuing a summons. The significant overheads charged to the issuing of a summons are customer services £873,000 (75%), Corporate IT £119,000 (55%), and Finance £103,000 (35%). The Council has explained that a high percentage of customer service cost is carried out from the remainder stage to the summons and this is the reason for the significant percentage. The Annual billing creates work for a very short period of time and post summons work is on vastly reduced numbers of cases. The explanation is plausible, but the Council were unable to substantiate this with any detailed analysis to support the apportionment of 75%. A more detailed exercise to apportion Council Tax overheads to summons charges needs to be undertaken.

Council Tax Reduction Scheme Total £774,000 representing 23% of overall cost

In 2013/14, the first year of the Council Tax Reduction Scheme, more residents were required to pay. Benefits staff were used to check potential summons cases to ensure that there were no outstanding queries on CTR claims, that calculations were correct and there were no issues around vulnerability to ensure only relevant cases were summonsed; to the extent to which additional costs resulted in summonses (which accounts for approximately a third of summonses), the costs were included in the calculation. As this was the first year of the scheme the costs were higher. These costs have reduced in 2014/15 when caseloads decreased.

The Council has included a cost of £773,689 related to the Council Tax Reduction Scheme within their calculation.. All Council Tax Reduction cases listed for potential summons are manually checked by Council Tax officers and then by benefit officers to award the reduction and review the vulnerability status of individuals to ensure recoverability action is

appropriate. Individuals are contacted by phone or sent letters. The review process is labour intensive and includes manual checking of the Council Tax Reduction claim, the circumstances of the individual, and the history of contact with the claimant. Council officers have also contacted claimants by phone and sent reminder letters which has generated further contact from individuals.

As 2013/14 was the first year in which the Council Tax Reduction Scheme was introduced we would expect the amount of checking to be higher in this year, but we would expect that costs would decrease in subsequent years. Therefore, the Council will need to ensure that the costing exercise is reviewed for subsequent years.

Comparability with other London Boroughs

The Council's charges are broadly in line with other London councils, taking account that the Council does not charge for the liability order and that there are differences between the operating processes across authorities and with policies on absorbing costs and passing these on to individuals where a summons is issued. The Council has stated that they have sought to pass on actual costs leading to a summons and have not absorbed these costs as some others may have done.

Below are charges made by neighbouring Councils

London Borough of Camden £95

London Borough of Islington £125

London Borough of Waltham Forest £120

London Borough of Enfield £95

In terms of the cost of issuing a summons expressed as a proportion of total council tax collection costs, this is 63% overall.

Conclusion on costings

The method of calculation used by the Council is not the only method they could have chosen to use and there may well be methods that more accurately assess the amount of those costs.

Although in our view the Council has shown that the level of costs it recovers is on the whole not unreasonable for the purposes of the 1992 Regulations, we consider that a more detailed calculation of the Council's costs would provide the Council with a better understanding of the actual costs associated with issuing a summons. This detailed calculation will then need to be re-performed periodically.

Impact of Judicial Review

In considering your Objection, we have also had regard to the impact of the Judicial Review of the Magistrates' Court. Although the order in the

particular case had been set aside, the Judgement stated that the charging of costs against you was unlawful, because the Magistrates had erred in law. The charging of costs would presumably also be potentially unlawful in all other similar cases, although the liability orders in these other cases have not been set aside.

The question then arises of whether or not unlawful action by the Magistrates Court renders the related income in the Council's accounts unlawful. This is a complex issue on which it would be time-consuming and expensive to conclude and we have not reached a conclusion because, even if we concluded that the Council's income were rendered unlawful for this reason, we would not intend to seek a declaration to this effect because:

- the actions of the Magistrates have already been considered by the Court
- the Council has accepted the income in good faith, unaware of any failure in the processes followed by the Magistrates
- as auditors of the Council our primary concern is on the actions of the Council, which are in this instance primarily around the calculation of the costs reasonably incurred, which we have considered above.

Application to the Court

If an item of account is contrary to law, it is our discretion as to whether we apply to the Court for a declaration under section 17(1) of the 1998 Act to that effect. Relevant factors include the quantum of the item of account involved, the expense of an application, the practical consequences of any decision, the prospects of success and whether the Court would, in the circumstances, be likely to make an order under section 17(2)(a) or (b) of the 1998 Act. In this case, having considered the matter carefully, and having taken into account all the representations we have received, we have decided not to exercise our discretion to seek a declaration under Section 17(1) of the 1998 Act because:

- Whilst the Council need to undertake a more comprehensive fully detailed costing exercise, the amounts it has claimed have been shown not to be unreasonable and the Council does compare broadly with other London Boroughs. Although different processes are used across authorities and so charges will differ, we would expect them to be broadly similar.
- As we consider that the actual costs claimed were broadly reasonable, there would be little or no benefit in us applying to the Court for a declaration. The lack of a more detailed assessment of costs reasonably incurred can be addressed by the Council implementing the recommendation that it should carry out such an assessment in the future, which it intends to do and which we will monitor.
- For the reasons set out in the preceding section, we do not believe that, even if we were to conclude that the impact of the Judicial

Review of the Magistrates Court's actions potentially rendered any of the income in the Council's accounts unlawful, that we should seek a declaration for this reason.

Public interest report

Whether or not to issue a report in the public interest is a matter for us in the exercise of our discretion. Relevant factors include the quantum of any unlawful item of account or loss, whether there were significant failings in governance, whether the matters that might be the subject of a report are on-going, whether there has been significant publicity in respect of the issues, whether we have recommendations to make to the Council and whether we believe that our independent view should be expressed in public.

We have considered the above factors and also considered the points you made in your representations about why you consider we should make a public interest report.

We have specifically considered the fact that the Council has not carried out a detailed calculation to arrive at the amounts claimed for costs, but we have concluded that the actual costs charged and methodology applied were not unreasonable. We have reviewed a selection of summons and liability order costs charged by other councils and the Council's charge for the summons is in line with others when the costs of the liability order are included.

Our recommendations

We have decided to make the following recommendations to the Council (these are not statutory section 11 recommendations):

- The Council should carry out periodically a more detailed robust calculation to determine the costs incurred for the purposes of Regulation 34 of the Council Tax (Administration and Enforcement) Regulations 1992;
- The Council need to retain appropriate evidence supporting the exercise they undertake to derive the percentages used in their apportionment of costs to issuing the summons;
- The Council should separately calculate the costs of issuing a summons and a liability order;
- The Council should explore methods to increase the efficiency in the administration process to reduce the time it takes to check pre-summons listings;
- The Council needs to review their classification of costs. Costs currently classified as direct would not vary with the amount of claims and appear to be indirect costs;

- The cost relating to the Council Tax reduction scheme need to be reviewed as these are likely to reduce in years subsequent to 2013/14.

Rights of appeal

You have a statutory right of appeal to the court against our decision not to make an application to the court for a declaration that an item of account is contrary to law - see Section 17(4) of the Audit Commission Act 1998.

Any appeal must be commenced in the High Court. An appeal must be made by filing an appellant's notice in the prescribed form (Form N161) at the Administrative Court Office, Royal Courts of Justice, Strand, London, WC2A 2LL, within 28 days, calculated from the date on which you receive this letter. The procedures relating to statutory appeals are set out in the Civil Procedure Rules 1998 (as amended) and supplemental Practice Directions.

We suggest that anyone considering an appeal should take their own legal advice.

I have sent a copy of this letter to the Council.

Yours sincerely



Paul Dossett
Partner

