

Report of:	Head of Finance
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Key Decision:	No
Report Track:	Cabinet: 20/11/14

CABINET
20 NOVEMBER 2014
BILLING, COLLECTION AND RECOVERY OF COUNCIL TAX AND BUSINESS RATES

1 Purpose of Report

- 1.1 To describe and explain the challenges currently facing the Local Taxation team in collecting arrears of Council Tax and Business Rates.
- 1.2 To explain the actions being taken to address those challenges.
- 1.3 To seek approval of two policies required to support the actions being taken by the Local Taxation team.

2 Recommendations

- 2.1 That the content of this report be noted
- 2.2 That the Billing, Collection and Recovery Policy and Bankruptcy, Insolvency and Charging Order Policy be adopted.

3 Key Issues and Reasons for Recommendations

- 3.1 The shared Local Taxation team collects over £77m per year, in Council Tax and Business Rates, on behalf of Cannock Chase Council. (A further £100m is collected for Stafford Borough Council). Whilst a certain amount of non-payment is inevitable, failure to collect the sums due can have a significant impact on the Council's finances and reputation. It is therefore important to have robust procedures in place to maximise performance in this area.
- 3.2 Increasingly local taxes are becoming difficult to collect in certain circumstances. Whether that be as a result of taxpayers inability to pay, for financial reasons, or by companies and individuals seeking to exploit apparent "loopholes" in the

legislation or to operate “scams” to avoid liability. These issues are explained and addressed in this report.

- 3.3 The current funding arrangements for local authorities, mean that more than ever, the Council needs to seek to maximise its revenue generation by way of Council Tax and Business Rates income and New Homes Bonus. Again, the actions needed to optimise our financial position are explained.

4 Relationship to Corporate Priorities

- 4.1 This report supports the Council's Corporate Priorities as follows:
- (i) The significant financial impact of Council Tax and Business Rate income, affects the Council's ability to deliver all of its priorities.

5 Report Detail

- 5.1 For most of our customers, paying their Council Tax or Business Rates, is a matter of routine. Indeed 64% of Council Tax and 45% of Business Rates payers, do so by direct debit, on the due date. The Council would therefore hope to recover around 98% of the amounts due, within the year to which it relates. In 2013/14, our collection rates for both Council Tax and Business Rates dipped to 96%. Action is needed to recover this position and to improve future collection rates.
- 5.2 The reduction in Council Tax was partly due to changes in the Government's funding of benefits however for both Council Tax and Business Rates the recovery of outstanding monies is becoming increasingly difficult due to serial offenders.
- 5.3 From 1 April 2013, the previous Council Tax Benefit scheme was replaced with the Council's requirement to implement its own Local Council Tax Reduction (LCTR) scheme, including a 20% reduction in the amount of funding available in respect of Working Aged claimants. Many local residents were faced with increased Council Tax Bills, or with paying Council Tax for the first time.
- 5.4 In 2013/14 we added additional steps into the recovery process for these people to help them manage the enforced change in their circumstances. We also encouraged these claimants to seek help from the discretionary fund, included in our LCTR scheme. The Council Tax collection rate for these people was approximately 80%, as opposed to the 96% achieved overall. Whilst we will continue to support these, or any other, customers who are experiencing financial difficulties, the normal course of Council Tax recovery, will be taken for all defaulters in 2014/15 and onwards.
- 5.5 Detailed analysis of the outstanding debts shows that a number of Council Tax and Business Rate payers repeatedly default on their payments. In Business

Rates particularly, this can lead to large amounts being owed by some individuals and organisations. Traditional recovery methods have not proven successful in some cases and so a new approach is needed

- 5.6 The Council has not previously used its powers to make individuals bankrupt, to wind up companies or to seek charges against a debtor's property. These are harsh measures which will often have significant detrimental affect on the debtors. We have now reached the stage with some debtors, whereby such harsh action is necessary as all other options have been ineffective.
- 5.7 For that reason, the Bankruptcy, Insolvency and Charging Order Policy is appended to this report and approval to it is sought. This policy will ensure that we use these powers in a reasonable and proportionate manner, and that the welfare of debtors is protected as far as is possible.
- 5.8 In addition to collection issues there is also a growing trend within certain elements of the business community to employ a number of measures "scams" in order to avoid rate liability. Since April 2013, changes to the funding of local authorities introduced the concept of local retention of rate income. The district Council now receives 40% of its rate income (with the County Council getting 9%, Fire Authority 1% and 50% to central government). Conversely, the effect of this is that the Council will suffer 40% of any rate income lost to scams and avoidance schemes.
- 5.9 Increasingly therefore the Council will need to deploy resources to counter these actions to protect our financial interests and those of our council tax payers. Cabinet in May 2013 requested that a letter be sent to the Cannock Chase MP to request that the Government look at these particular practices to ensure liability for payment of rates is not unfairly avoided by any individuals and organisations involved .
- 5.10 In addition the Council in responding to a review of Local Government Finance similarly requested changes in legislation to deal with such practices. The following text describes some of the common scams and the actions that the team will put in place in order to mitigate their impact, within current legislation parameters.
- (i) **Intermittent Occupation.** Subject to some specific exemptions, full business rates are payable in respect of empty properties. Before this liability commences an empty property will enjoy a 3 month free period (6 months in the case on industrial units). For the purpose of establishing this free period, the council must disregard short term occupation of less than 6 weeks.
- Agents acting for ratepayers will often therefore advise the owner of an empty property, to move items into it, (so as to occupy it) for a period of 6 weeks, every 3 months. By doing this a new 3 month free period is established.
- Provided the owner does occupy the property in this way, and makes no false statements to the Council, the practise is not unlawful. Many large and reputable companies (and indeed one government agency) deploy this practise. ***(The Council, as part of its response to the Independent***

Commission Review of Local Government Finance, proposed that only one exempt period should be allowed within a twelve month period)

In the interim the actions for the Local Taxation team will be to monitor serial offenders are to verify that any statements made, by the owners, are true and that these properties are rateably occupied during the 6 week period.

- (ii) **Licensing Trade.** A similar flaw exists in the current business rates system whereby loopholes in legislation allow a business such as a public house not to pay any outstanding business rates since the responsibility falls on the tenant rather than the landlord. The offenders, some by choice others by the failure of the business, fall into arrears with their business rates and other taxes, and leave the premises. In the licensing industry premises can end up being leased numerous times, with each individual tenant building up their own tallies of non-domestic rate arrears in respect of the same public house. The tenant cannot pay; goes bankrupt or simply disappears whereas the owner of the premises the brewery is not liable for the arrears. Each time the local authority has to write off the unpaid business rates with the costs being borne by all stakeholders within the business rates regime. The Council can however specifically target the licensing trade in its recovery procedures however for the reasons stated above this might be to no avail. ***(As part of its response to the Independent Commission Review of Local Government Finance, we proposed a solution whereby, in these cases, the Charge is on the property –the public house – rather than the tenant.)***
- (iii) **Voluntary Liquidations.** Under insolvency laws, the proprietors of limited companies can (and should) wind up a company that is not able to continue to trade in a solvent manner. It is not uncommon for such companies to be taken over and for the premises to re-open with similar trading names and the same personnel in place as was the case before the insolvency. Provided the appropriate laws are complied with, this is a perfectly legitimate process that will often result in the Council receiving ongoing business rates from the new organisation.

However, some irregular practices appear to have been identified from within a small number of organisations. Some proprietors have repeatedly closed and re-opened businesses in this way, apparently with the purpose of avoiding liabilities and responsibilities. Whereas others have let their properties, usually at peppercorn rents, to organisations from whom rates will be difficult if not impossible to collect.

The actions that are needed to counter these scams again involve specific targeting and include:

- Prompt recover action in respect of all unpaid rates, to try to ensure that the bills are paid before a company closes.
- Identification of instances where these practices have occurred and potential legal action against the proprietors and directors of the companies personally. This is a complex area of law for which specialist lawyers will be deployed.

- (iv) **Charitable Relief.** Owners of some empty units have let their properties to charitable organisations in order that they may seek charitable relief. A charity will be entitled to 80% mandatory relief for a property that it occupies, or an empty property that will be used in accordance with its charitable purpose, when next occupied.

This can be said to have a positive impact on the area, for example when a shop unit that would otherwise be empty is occupied by a charity. However there have been instances when the owners of very large units have let them (again at peppercorn rents) to supposedly charitable organisations who will make minimal use of the property, and indeed may have been created primarily to avoid rate liability.

Similarly to the actions regarding voluntary liquidations, actions are needed to verify the occupations, to recover rates from the landlords if the occupations cannot be verified, and to take action against any individuals being found to provide false information.

- 5.11 In order that the powers of the Bankruptcy, Insolvency and Charging Order Policy are used in a reasonable and proportionate manner, and that the welfare of debtors is protected as far as is possible the recovery procedure timeline is attached as Appendix A.
- 5.12 Appendix B, to this report contains the policy which will be applied in the recovery of Council Tax and Business Rates
- 5.13 Appendix C to this report contains the policy that will be applied in the cases where insolvency action or charging orders are required.
- 5.14 As highlighted throughout the report the Council has not previously used its powers to make individuals bankrupt, to wind up companies or to seek charges against a debtor's property. These are harsh measures which will often have significant detrimental affect on the debtors. We have now reached the stage with some debtors, whereby such harsh action is necessary as all other options have been ineffective.

6 Implications

6.1 Financial

There are no direct costs associated with the implementation of the policies appended to this report.

In most cases, the cost of taking recovery action, for Council Tax and Business Rates, can be recovered from the debtor. When action is taken which is unsuccessful, we may not recover all of our costs, for example the costs of entering cases into court for Committal or Insolvency action. Officers will consider the likelihood of making a recovery, before undertaking any action and therefore unrecovered costs will not be significant and will be managed within existing budgets.

The collection of Council Tax and Business Rates is very significant to the Council's financial position. It is essential therefore that we use all reasonable endeavours to maximise our collection rates, whilst at the same time ensuring that our policies are and equitable and recognise any particular vulnerabilities of debtors.

6.2 **Legal**

The legal authority for recovery of Business Rates and Council Tax are contained in the Local Government Finance Acts of 1998 and 1992 respectively, and regulations made thereunder.

6.3 **Human Resources**

There are no direct implications within this report.

6.4 **Section 17 (Crime Prevention)**

There are no direct implications within this report.

6.5 **Human Rights Act**

There are no direct implications within this report.

6.6 **Data Protection**

There are no direct implications, as no personal data is included within this report.

6.7 **Risk Management**

Failure to maintain robust collection procedures would have serious consequences to the Council's finances.

6.8 **Equality & Diversity**

No individual or organisation likes paying Business Rates or Council Tax, and for some, the amounts payable are significant. But we are bound by law to do so, and in fairness to the majority of service users who do pay their bills, the Council must use all of its powers to recover from those who try to avoid payment. Recovery and enforcement action will often be unpopular and will, at times, have a significant impact on those affected. This policy ensures consistency of approach to the collection of debts, whilst at the same time ensuring that the individual circumstances of debtors, are not ignored.

Evidence of current arrears indicates that some debtors regularly default on their bills and/or employ avoidance tactics to avoid their liability. The Council will therefore, in some cases be required to use such measures as Insolvency, bankruptcy and Charging Orders to recover debts. This is not a step that we take lightly and will seek to engage with debtors, to find alternatives before instigating these measures.

6.9 Best Value

By the adoption of the two policies appended to this report, the Council seeks to make best use of its resource and to optimise its revenue collections.

7 Appendices to the Report

Appendix A	Default Procedure Flow Chart
Appendix B	Revenues Billing Collection and Recovery Policy
Appendix C	Bankruptcy, Insolvency and Charging Order Policy

Previous Consideration

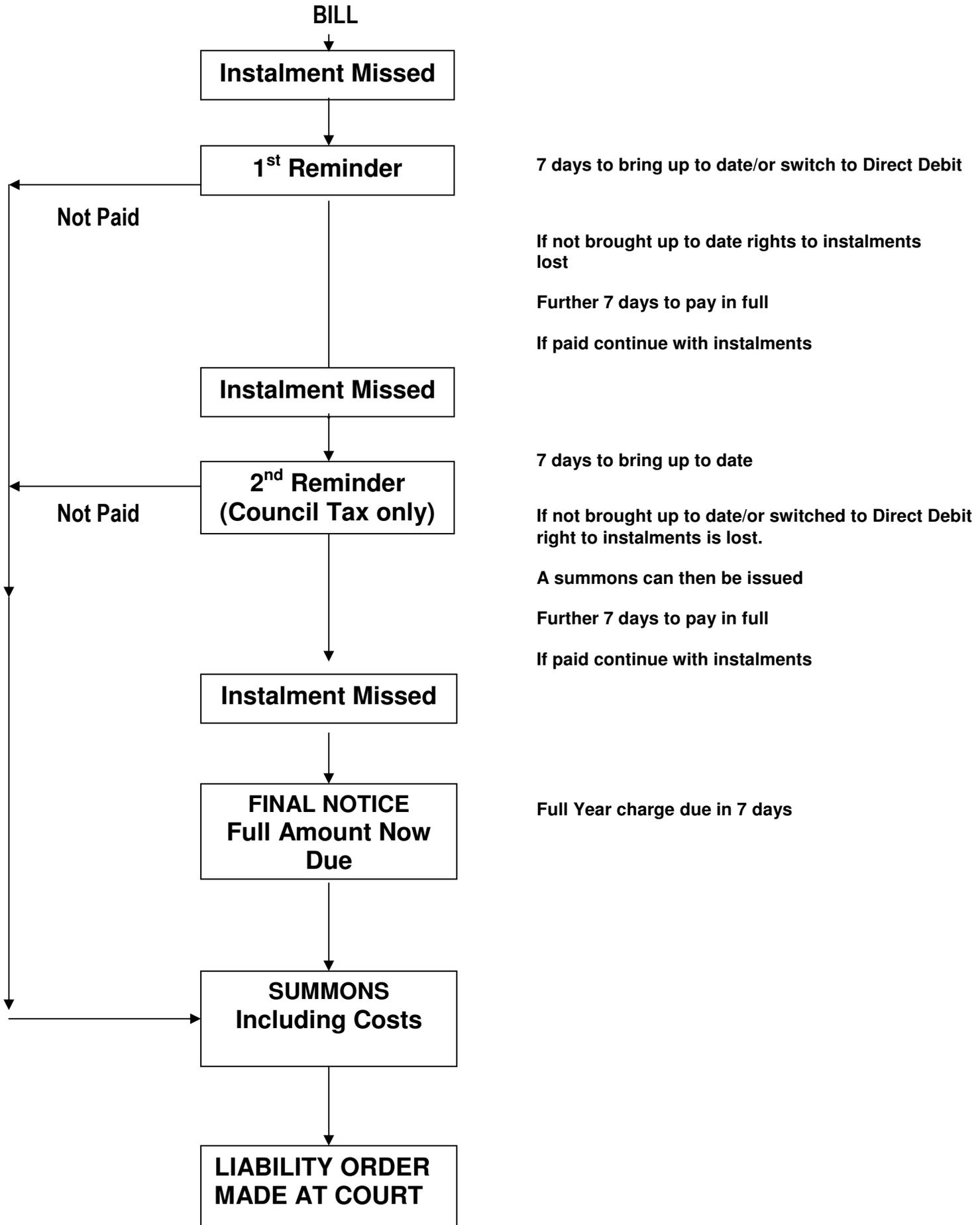
None

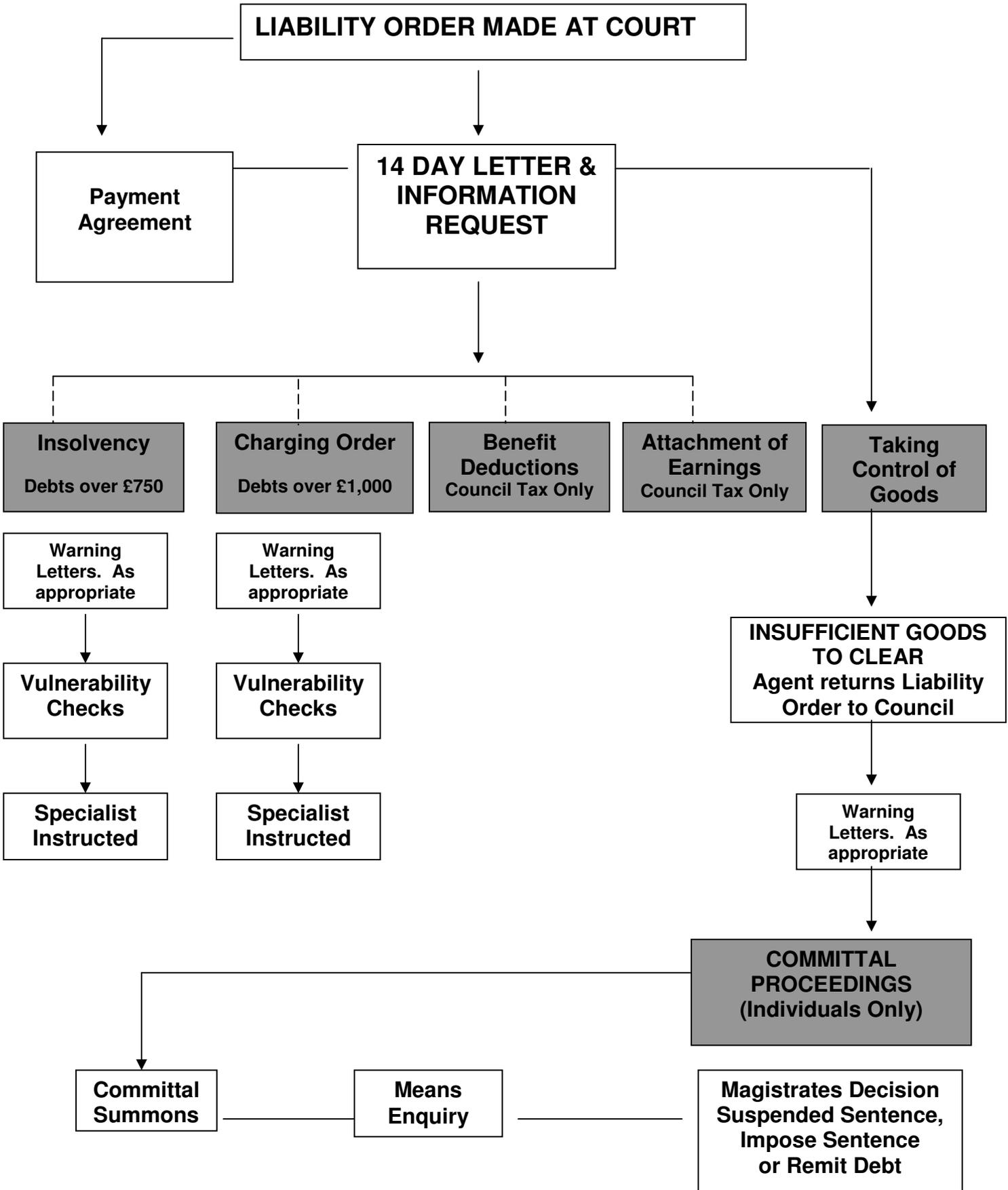
Background Papers

None

APPENDIX A

Default Procedure – Flow Chart





Summary of Recovery Policy.

Cannock Chase District Council will always apply the law consistently and fairly.

- Council Tax and Business Rate Reminders/Final Notices are issued in accordance with legislation and a set recovery timetable.
- Summonses will be issued in accordance with legislation and will include costs to be paid by the debtor..
- Arrangements are made at various stages throughout the recovery process. However, Recovery Action will not necessarily be placed on a hold until the Council has been granted a liability order at court covering the whole debt.
- The Council may seek to obtain a liability order covering the arrears in order to secure future payments and safeguard its interest for the debt outstanding.
- When debts are referred to Enforcement agents, those agents will be permitted to recover fees and charges, connect to the Taking Control of goods, in accordance with legislation.
- Debtors will be expected to negotiate payment agreements with the Enforcement agents, once debts have been referred to them.
- The Council and its agents will have regard to any vulnerability issues that it is aware of, when dealing with recovery and enforcement action.

CANNOCK CHASE COUNCIL
LOCAL TAXATION AND BENEFITS SERVICES

Billing, Collection and Recovery Policy

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Council Tax Collection and Recovery Policy

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Billing Collection and Recovery

1. Introduction

Cannock Chase Council is fully committed to ensuring that all aspects of the collection and recovery processes are delivered in the most efficient and effective ways, to the highest standards of customer care and having regard to the individual needs of customers and the interests of the Taxpayers.

The Council is also committed to ensuring that its taxpayers interests are fully protected by maximising the income that can be generated for receipts of Council Tax and Business Rates.

This document sets out the policy guidelines of Cannock Chase Council that will be followed, in the billing, collection and recovery of Council Tax and Business Rates.

2. Statement of Objectives

- We will issue a prompt, correct bill that is understandable and easy to pay
- We will collect monies outstanding quickly and efficiently
- We will treat all liable persons with courtesy, respect and sensitivity.
- We will ensure any person experiencing legitimate difficulty in paying has the opportunity to agree flexible payment arrangements.
- We will attempt to contact the tax payer as early as possible after payment default occurs to avoid formal recovery action where possible.
- At all stages of recovery action we will attempt to contact the tax payer to arrange mutually acceptable payment arrangements.
- We will ensure those who attempt to avoid paying without legitimate reason will be pursued using all legal means.
- We will recover all costs incurred in recovery action from the relevant tax payer.
- We will provide clear advice at every stage of recovery including tax payers' rights and responsibilities and also sources of independent advice e.g. CAB.
- We will promote regular Direct Debit payments and other regular payment schemes that ensure all amounts due are collected in the year due.
- We will ensure that any exemptions, discounts and reductions are paid only to those who are genuinely entitled to them.

3. Background

The collection and recovery of Business Rates and Council Tax is prescribed by the Local Government Finance Acts of 1988 and 1992 respectively, and accompanying and subsequent regulations.

The Council must undertake collection and recovery within this legal framework but it does allow for some degree of discretion regarding the manner and emphasis of administering the procedures.

Procedures are designed to take account of several basic principals, which are crucial to ensure a successful process and make sure that there is a fair and equitable service to the taxpayers of the Council.

In recent times of austerity and in view of the changing financing regimes facing local authorities, greater emphasis is now placed on the maximising of the Council's income through receipts of Council Tax and Business Rates. This is achieved by

- Ensuring that all chargeable property is brought into the rating list or valuation list promptly.
- Ensuring that only legitimate claims for reductions are accepted.
- Ensuring that “scams” designed to avoid liability for charges are countered.
- Ensuring that Bills are issued promptly and collected.
- Promoting efficient of collection methods.
- Taking swift, but fair and proportionate action against defaulters.
- Ensuring that any discretionary reliefs granted, support the Council's priorities, comply with our policy and are supported by the appropriate business

4. The Policy

Prevention is the first essential step in sensitive and cost effective recovery process. There are a number of measures that can be taken to minimise indebtedness at an early stage which reduce the necessity for costly enforcement action which not only reduces costs, but works towards avoiding potential hardship for taxpayers. Our main priority is to make early contact with taxpayers to establish the correct amount that is payable and make a mutually acceptable arrangement to pay, which does not increase indebtedness.

We will distinguish between those who have genuine difficulty in paying their debts and those who are deliberately withholding, delaying or giving false evidence in respect of payment of debt. All taxpayers will be given the opportunity to make arrangements to pay and any sanctions will only be taken after attempts to make satisfactory arrangements have failed.

We will ensure that those who have the means to pay are required to do so on the due date specified on their bill and procedures will be in place to ensure that recovery action is taken uniformly and without favour to everyone who fails to pay for no good reason, thereby ensuring that all taxpayers are treated equitably.

We will ensure that all available allowances, discounts, rebates and relief's are granted in appropriate cases at the earliest possible time in order to ensure the amount owed is correct. We will make all reasonable attempts at all stages of recovery to identify taxpayers who may be entitled to claim benefit or other reductions. Taxpayers will be encouraged and assisted to make appropriate applications.

We will establish payment default as early as possible and will then contact the taxpayer in order to attempt to make arrangements to pay.

We will ensure that all accompanying documentation is clear and easy to understand, and that appropriate publicity is undertaken to encourage people to pay early or to contact us promptly in order to avoid their debt building up.

We will fully consider the taxpayer's financial and personal circumstances at every stage of contact, in particular as early as possible after the debt is established to allow reasonable timescales in which to settle the outstanding debt

At each stage of collection or recovery, we will make all appropriate attempts to contact the taxpayer as soon as possible to make arrangements to pay. The overall policy is to make early contact to prevent accumulation of debts, which if neglected can become unmanageable. When making an arrangement to pay, consideration will be given to all outstanding debts owed by the taxpayer.

It is important that taxpayers are made aware of their rights and responsibilities and the legal provisions that they may become subject to. This information will be made available at reception points, collection points, advice centres and any other groups that are established to help or advise people in financial difficulties. Particular attention will be given to explain the simple and often overlooked details of methods of payment available, where and how bills can be paid and the availability of allowances, discounts, benefits and reliefs.

All statutory notices will be issued as early as possible within the legal framework to ensure maximum cash flow (having taken account of the various exceptions within this policy document).

Whilst in general payments will be required in accordance with the regulations, where taxpayers pay regularly, but not in accordance with the statutory instalment scheme, we will be as flexible as possible to their needs of when it is suitable for them to pay. Our policy aim is to ensure payment of the full bill for the year, within the year.

We will monitor outstanding debts and take appropriate recovery action. Where there is default in an arrangement we will attempt to contact the taxpayer in order to either review the arrangement or to take further recovery action.

We will recommend to taxpayers that they should contact independent advisors, such as the CAB, where it is believed that advice in debt management is appropriate.

We will make all reasonable attempts to identify and bill partners and other individuals (where they exist) who may be jointly liable for a charge in order to recover against the person who has the greatest ability to pay.

4.1. Bills

- We will issue bills and revised bills, where necessary, as early as possible.
- We will promote and encourage Direct Debit as the easiest, most effective method of payment but all other methods will be made freely available.
- Direct Debit payers will be offered a choice of alternative payment dates within the month.
- Monthly instalments are the preferred method of payment frequency but any reasonable method of payment within the instalment period will be considered.

4.2. Missed Payments – Reminders

- Taxpayers are required to pay in accordance with the regulations. We will issue reminders within one calendar month of an instalment being missed in accordance with the regulations.
- The reminder will inform the taxpayer of the amount in arrears and that if payment is not received within 7 days the facility to pay by instalments will be withdrawn and will result in further recovery action for the full years charge.
- If the instalments are brought up to date within the statutory period or we make an agreement with the taxpayer, or we make an alternative arrangement, we will not take any further action providing future payments are made correctly.

4.3. Summons and Liability Orders

- If payments are not made as required or agreed, the Council will make complaint to the Magistrates' Court and in accordance with the regulations, a summons will be issued giving at least 16 days notice before the hearing date.
- At the hearing, if the court is satisfied that the charge is legally payable and remains unpaid, the Magistrates are required to issue a Liability Order, together with an order for reasonable costs.
- Taxpayers who do not attend Court will usually be dealt with in their absence.

- Unless alternative arrangements for payment have been made, or a course of recovery action decided upon, in the case of Council Tax debts, we will send a notice to the taxpayer when a Liability Order has been granted by the Magistrates.
- This notice will include the statutory requirement for information regarding the taxpayer's financial circumstances and employment, so that arrangements to recover the debt may be made from earnings or Income Support/Job Seekers Allowance as appropriate.
- In addition to the statutory requirement for financial information, this notice will emphasise the need to make an acceptable arrangement to pay based on the taxpayer's financial circumstances.

4.4. Powers provided by Liability Orders

4.4.1. Overriding Aims

- The Council's aim is always to collect any outstanding debt as efficiently and effectively as possible and will base any discretion as to methods of enforcement on this overriding aim.
- This aim will be balanced with ensuring that debtor's individual circumstances, where available, are considered.
- The previous conduct of a debtor will be taken into consideration when exercising discretion.
- The regulations only allow for one method of enforcement to be taken at any one time in relation to a single Liability Order. The Council will aim to use the most effective method at any point that debts remain outstanding.

4.4.2. Attachment of Earnings (Council Tax Debts only)

- If the details of the taxpayer's employment are known and an Attachment of Earnings Order is considered appropriate, we will make an Attachment of Earnings Order and serve it on the debtor's employer.
- The sums to be deducted are prescribed in the regulations and employers have a statutory obligation to comply with an Order.
- An employer may deduct £1.00 towards administrative costs on each occasion a deduction is made.
- Where the debtor has two or more unpaid liability orders the Council may request a maximum of two Attachment of Earnings Orders be initiated.
- Where alternative arrangements have been made but not adhered to, the recourse to enforce an Attachment of Earnings Order will be taken.

- If it is felt by a debtor that the deductions under the Attachment of Earnings Order will cause hardship, the debtor may apply to the Council for the deductions to be reviewed. This review will be undertaken on the basis of ensuring that any debts are collected as efficiently and effectively as possible.

4.4.3. Deductions from Benefits (Jobseeker Allowance or Income Support. Council Tax Debts Only)

- Where appropriate we will apply to the Department for Works and Pensions for deductions from Jobseeker Allowance or Income Support
- The Council can apply to the Job Centre Plus for deductions to be made from Jobseeker Allowance or Income Support but not from any other benefits being paid in association with Jobseeker Allowance and Income Support.
- The Council Tax (Deductions from Income Support) Regulations 1993 specify the fixed weekly amount deductible which is 5% of the Jobseeker Allowance or Income Support for a single person aged over 25.

4.4.4. Taking Control Of Goods (formerly known as Levy of Distress)

- We will pass debts to Enforcement Agents (formerly known as bailiffs) to take control of the debtors goods, to enforce payment where it is felt that no alternative enforcement power is available or appropriate.
- Legislation permits the Enforcement Agent to charge statutory fees directly to the debtor. There is therefore usually no cost to the Council in this process.
- When a debt is referred to an Enforcement agent, we would expect the debtor to resolve payment of his arrears and associated fees with the agent.
- The Council will from time to time, issue operating rules and a Code of Conduct to its Enforcement agents. The aim of these is to ensure that the agents operate fairly, proportionately and within the legal framework.
- We will always try to establish if a debtor is vulnerable, and act accordingly when this is the case.

4.4.5. Bankruptcy, Liquidation and Charging Orders

- Any amounts due can be deemed to be debts for the purposes of the Insolvency Act 1986 in relation to winding up limited companies or to petition for the bankruptcy of individual.
- We will engage the assistance of private sector specialists in this type of recovery action, when appropriate.
- We will generally, only consider personal bankruptcy after other recovery methods have failed. However, we will choose it sooner if information is

received that suggests that by initiating bankruptcy proceedings, this be a more effective method of collection.

- Insolvency proceedings against companies may be preferable to attempting to take control of their goods, and this method will be deployed where it appears preferable, having regard to the size of the debt and the circumstances and conduct of the debtor.
- We will make reasonable efforts to ascertain if there are assets available prior to making a petition for bankruptcy or insolvency.
- Insolvency methods are administratively costly, and therefore a full assessment will be made before allowing cases down this route. Insolvency proceedings will only usually be considered where the overall debt is over £5000. The debt may be made up of debts other than Council Tax.
- Debts below £5000 will be referred for insolvency action, when the specific circumstances require it and it appears that other methods of recovery would not be productive.
- Charging Orders will be applied for where it is felt appropriate to do so. These will generally be followed with applications for Orders for Sale. Again, private sector specialism may be procured in these cases.

The procedure to be followed in these cases is included in the Council's Bankruptcy, Insolvency and Charging Order Policy

4.4.6. Committal Proceedings

- Where Enforcement Agents have attempted to take control of an individual's goods and (for whatever reason) have been unsuccessful, the Council has the power to apply for committal to prison. This requires attendance at the Magistrates Court to enable a means enquiry to be conducted to see whether failure to pay is due to 'wilful refusal' or 'culpable neglect'.
- The Council will only use this as a last resort. There will be many attempts to make arrangements and elicit payment, before reaching this stage, but in some cases there is no alternative.
- In the majority of cases where committal action is taken, there will have been persistent refusal or avoidance of payment and the Magistrates will be asked to impose a suspended sentence and order the taxpayer to make monthly or weekly payments.
- Legal precedents exist that state that Magistrates should not commit forthwith without either considering alternatives or having made suspended orders to coerce payment. Once a suspended order has been made, debtors are obliged to pay as required by the order. If the debtor fails to pay, the Magistrates are entitled to remove the suspension and order that the debtor serves the sentence. In these cases, the Council will give debtors an

opportunity to attend hearings to show cause why they have not paid. The term of imprisonment will not exceed three months for each Liability Order.

- If the Magistrates decide that failure to pay was not due to wilful refusal or culpable neglect they have the power to remit all or part of the debt. However, they are entitled to remit the debt on the basis of inability to pay.
- If a term of imprisonment is served, the relevant Council Tax will be written off as irrecoverable. Any part payment will reduce the term of imprisonment by the ratio of payment to the total amount of the debt.

4.5. Joint and Several Liability

- A Liability Order may be made against one or more joint taxpayers in respect of an amount for which they are jointly and severally liable.
- The recovery procedures may be applied to one or more than one of the joint taxpayers.
- Different recovery proceedings cannot be applied to one taxpayer simultaneously with proceedings against another joint taxpayer for the same debt.
- Committal proceedings can only be taken against any joint taxpayer if unsuccessful attempts have been made to levy distress against all the joint taxpayers.

5. Monitoring Performance

We will monitor, the effectiveness of our policy and approaches, and introduce measures that will give us useful information about our debtors and debts, in order to continuously improve our collection rates, for the benefit of all of the taxpayers of the

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CANNOCK CHASE COUNCIL

LOCAL TAXATION AND BENEFITS SERVICES

**Bankruptcy, Insolvency and Charging
Order Policy**

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Bankruptcy, Insolvency and Charging Order Policy

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Bankruptcy and Charging Order Policy

1. Purpose of Document

This policy covers debts owed to the Council although it is designed initially to recover Council Tax, Benefit Overpayment debt and Business Rates. The Council is committed to using the most effective recovery methods available to it. This policy will ensure that the recovery sections use of insolvency is consistent and complies with the relevant legislation and best practice.

2. Insolvency (Bankruptcy and Winding Up proceedings)

2.1. Legal Requirements

The legal requirements are contained within the Insolvency Act 1986. Essentially, bankruptcy action can be taken against any debtor who owes in excess of £750 to creditors and who, for whatever reason, is unable to satisfy his creditor's claims in full.

In addition, a debtor may initiate action by petitioning for their own bankruptcy. Winding Up proceedings are used against Limited Companies.

Insolvency frees a debtor from overwhelming debts so they can make a fresh start, subject to some restrictions, and makes sure the assets belonging to the debtor are shared out fairly among all the creditors. However the consequences can be severe and can involve the loss of the debtor's home or business and considerable legal and Trustee costs. The level of costs will reflect the complexity of the matters involved and the extent to which the debtor cooperates with the Trustee who is administering the estate.

Insolvency action takes place in the County Court or the High Court if the debtor resides in London.

2.2. Use of specialists to undertake this work

The Council will refer appropriate cases to a solicitor. Solicitors are fully authorised to deal with all matters connected with insolvency from the issue of the Statutory Demand to dealing with contested matters. Where appropriate a private sector specialist will be engaged to undertake the work on our behalf.

2.3. Circumstances where Insolvency Proceedings may be appropriate

- Where the debt exceeds £1,500 (or a lower limit of £750 in certain circumstances including where fraud is involved) and the debtor has sufficient assets or equity to ensure the debt is recoverable by the Official Receiver or the Trustee.

- Where the debtor is not making regular and mutually agreed payments that are sufficient to clear accruing debt and the arrears within an acceptable timescale.
- Where insolvency action is considered most effective in recovering from a particular debtor.
- Where the debt has arisen as a result of fraud.
- Where specific assets cannot be identified but there are indicators that the debtor is one of high material worth for example, renting high value property/has a high salaried profession.
- Where bankruptcy action would encourage payment from specific groups of debtors where their credit rating is important to them, for example company directors, self employed people and those people needing finance.

2.4. Special Circumstances

If made aware of the following circumstances prior to a Bankruptcy Order being obtained, the Council will consider withdrawing proceedings in favour of alternative enforcement action.

- Where a debtor, as a result of age, severe mental illness or serious learning difficulties, is vulnerable and cannot deal with their affairs.
- Where the debtor is currently in receipt of 100% Council Tax Reduction with no accruing debt.

2.5. Consideration of bankruptcy and officers actions

A decision for the Council to begin bankruptcy proceedings will be made by the Principal Revenues Officer, Revenues Services Manager or Local Taxation and Benefits manager.

As part of the consideration as to whether bankruptcy action is appropriate in an individual case, officers will consider the overall debt position, the financial position including income and equity, personal circumstances and the level of engagement including previous payment history.

The more information held about the debtor the more efficient the decision making process will be in terms of selecting the most effective enforcement option. As part of the decision making process the Council officer will seek to build a picture of the debtor and their circumstances and will achieve this in various ways, including some or all of the following activities. The list is not exhaustive.

- Demanding financial information in writing following a Liability Order being granted whilst stating bankruptcy is an option to be considered.
- Checking all Council Tax records and if possible any other records to see if there is any reason bankruptcy would not be appropriate as a result of vulnerability issues.

- Checking with the Benefits Service to ensure that all Council Tax Benefit and Reduction due to the debtor has been posted to the Council Tax account and that their records do not indicate significant vulnerability issues.
- Checking H.M. Land Registry to confirm property assets.
- Checking with a Credit Reference Agency for information on outgoings, requests for finance, mortgages and other financial information.
- Checking council house sales records to determine those recently acquiring assets.
- Checking known or potential employment details.
- Checking Benefit Overpayment records and Business Rates records (and including all debts in the bankruptcy action).
- Checking Companies House records for business information.

The Council may engage private sector practitioners or solicitors to undertake these checks and/or issue appropriate correspondence to the debtor.

2.6. Publicity

When a Bankruptcy Order is granted the administration of it lies with the Official Receiver (OR) or an Insolvency Practitioner (IP). The fact that the order has been granted is advertised in the London Gazette and in a local newspaper. The OR/IP will also notify other bodies such as local authorities, utility suppliers, land registry, National Savings and Investments etc. to give them an opportunity to submit claims of their own and to prevent illegal disposal of assets.

This policy will be available on the Council's web site and in appropriate circumstances; the Council will issue press releases on specific cases.

3. Charging Orders Legal Requirements

If the aggregated balance on Council Tax Liability Orders for a property is over £1,000 then an application may be made for a Charge to be placed on the same property only, to secure the debt owed to the Council. Charging Orders are not a method of enforcement in that the debt remains unpaid until the property is sold and the Charge extinguished by the payment of the debt from the proceeds. The property may never be sold or not for a considerable time and if no further action is taken then the Charge will be extinguished after twelve years in any event. If the debt is to be actively recovered then following a Charging Order being obtained, an application has to be made to the Court for an Order of Possession and Order for sale.

Charging Orders may only be used for Business Rates debt with the agreement of the ratepayer and therefore such action will not be taken without the written consent of the ratepayer.

3.2. Use of solicitors to undertake this work.

The Council will refer appropriate cases to a solicitor. Solicitors are fully authorised to deal with applications for Charging Orders, Orders for Sale and Possession and contested matters. Where appropriate, private sector specialist assistance will be sought.

3.3. Circumstances where a Charging Order may be appropriate

- Where the property is currently for sale voluntarily and a Charging Order is used as a way of securing the debt by agreement with the Council.
- Where the property is owned by a debtor who resides outside UK jurisdiction.
- Where a debtor, as a result of age, severe mental illness or serious learning difficulties cannot deal with their affairs.
- Where the debtor's whereabouts are unknown making service to allow bankruptcy action difficult.
- Where a payment arrangement has been agreed on the basis that the debt is secured via a Charging Order.

3.4. Decision Making

The number of cases is very small. The Local Taxation and Benefits Manager will consider each case on its own merits being mindful of all the facts and the level of arrears.

4. Management Checks

Prior to the issue of insolvency proceedings, the Council's or its agent will perform the necessary checks to ascertain, as far as is possible, the circumstances of the debtor. Such checks will establish any apparent vulnerability issues, and the suitability of the case for insolvency action, as opposed to other forms of recovery and an opinion on the likelihood of success.

5. Reporting Arrangements

The cases progressed to Insolvency stage will be monitored, on a monthly basis to review aspects of the work being undertaken, and the success of the action.

6. Policy Review

This procedure will be reviewed and updated, from time to time, in order to ensure it remains valid, effective and relevant.