

Debt recovery procedures for council tax and business rates



Lichfield
District Council

Recovery procedure

1. Reminder notice

- 1.1 Not all instalments are paid on time. We acknowledge that there are many reasons for late or non-payment. We will pursue all overdue payments diligently, whatever the payment method, and where an instalment remains unpaid, we will issue the appropriate reminder notice.
- 1.2 Due to the number of accounts administered by the Revenues Team, reminders will not be checked individually before they are issued. Parameters are agreed by the senior managers in the Revenues Team and reminders are issued on this basis. The parameters consist of the number of days the instalment is behind and the monetary minimum value.
- 1.3 It is the customer's responsibility to make sure that all instalments are paid on or before the due date. Late payment causes cash flow problems and can lead to an increase in the council tax payable by all customers in the following financial year.
- 1.4 A reminder notice will always be issued before a summons, but non-receipt of either is no excuse for missing payments and cannot be used as a reason for non-payment.
- 1.5 Reminders will not be cancelled without "good reason".
- 1.6 In some very exceptional circumstances, such as cases of demonstrable extreme financial hardship, and depending on the information available to us, we may agree to spread the charge over a longer period than the prescribed statutory instalment scheme. We will confirm any such arrangement in writing. If these arrangements are not paid then we will continue with recovery action in accordance with the regulations.
- 1.7 A reminder will give a charge payer seven days to pay the late instalment. If they do not pay within seven days, they will lose their right to pay by instalments and the full outstanding charge for the year will become due within a further seven days. A final notice will not be issued at this point.
- 1.8 A reminder notice will show the instalment that is overdue, and the total charge due if the instalment is not paid within seven days. It will also warn of further action to be taken in the courts if the reminder is not complied with. The instalment may be for a single year or multiple years.
- 1.9 Reminder notices will be issued in the names of all liable parties. A separate notice for each party will not be issued.

2. Final notices

- 2.1 Final notices are issued where there has been a third failure to pay an instalment on time within a financial year, or there was no right to instalments and the amount due has not been paid. (This is often the case for a closed account), or where all statutory instalments have fallen due.
- 2.2 A final notice will give seven days to pay the outstanding amount.
- 2.3 A final notice will state the amount due and payable and advise of further recovery action in the courts if the notice is not complied with.

- 2.4 To protect the council's interests, a hold will not be placed on recovery action at this stage, unless the account is brought up to date and a direct debit instruction is set up to pay the remaining years instalments.
- 2.5 Final notices will be issued in the names of all liable parties. A separate notice for each party will not be issued.
- 2.6 As with reminder notices, final notices will not be individually checked prior to being issued.

3. Summons and obtaining a liability order

- 3.1 Each year a limit will be agreed by the Revenues, Benefits & Corporate Debt Recovery Service Manager, on the level of debt above which a summons will be issued. This amount will be agreed in line with court costs and will stop a tax payer's debt being doubled due to recovery action. Costs usually fall on the tax payer and therefore the cost to the council is mainly in terms of staff time.
- 3.2 A summons is issued when a reminder notice or final notice has not been paid. A summons is the first step in the process of obtaining a liability order.
- 3.3 The council will lay complaint at Cannock Magistrates court or other magistrates court if directed by Her Majesty's Court Service.
- 3.4 A list is produced prior to the issue of a summons. Each account on this list will be checked to ensure there is no genuine outstanding matter with the council that should prevent a summons being issued. This will include work outstanding in the document workflow system. If it will affect the amount payable, to the extent that if the work was completed a summons would not be issued, a suppression will be put on the account. A check will also be made to ensure that there are no payments waiting to be allocated to the account and a review of any notes will be made. A summons will not be suppressed if there is an issue raised that does not affect liability or it could be considered frivolous with the intention of delaying payment or if there is an outstanding application for council tax reduction. (Also known as council tax support).
- 3.5 Summonses are issued each month and a minimum of 14 days prior to the court hearing.
- 3.6 At each stage of recovery, additional costs will be incurred. These costs are payable by the liable person. Reasonable costs will be incurred at the issue of a summons. Further reasonable costs are incurred upon the granting of a liability order. These costs are agreed with the Magistrates Court. Only in exceptional circumstances are these deemed not payable. A decision to remove costs will be made by the senior managers in the Revenues Team.
- 3.7 A summons is issued to each individual liable person/party. The summons will state that they are to appear at court on a specific date and time. The summons will state the amount due and the costs which are payable at this stage.
- 3.8 A code of practice leaflet is included with each summons for non-payment of council tax. This leaflet explains the procedure for obtaining a liability order and the steps which can be taken to recover the outstanding debt.
- 3.9 If the amount, including costs, shown on the summons is paid in full before the court hearing, no further action will be taken. The court will be notified that the debt is paid in full.
- 3.10 Any payment made to an account will be allocated to clear the costs first.
- 3.11 The person representing the council at the hearing will be a duly authorised person. Evidence will be provided as required by the legislation.
- 3.12 If any amount remains outstanding on the date of the hearing, the council will ask the Magistrate to grant a liability order. The court will grant the order if "it is satisfied that the sum has become payable by the defendant and has not been paid".

3.13 The Magistrate's do not have the authority to make arrangements with debtors to clear the amount outstanding or determine if a discount/exemption or benefit should be awarded. This will be explained to any person appearing at the hearing.

4. Post liability order action

4.1 Once a liability order is granted, the council may, without further recourse to the Magistrates' Court, take further steps to recovery unpaid council tax or non-domestic rates. The remedies available and in no particular order are:

- An attachment of earnings order^{*1}
- An attachment of benefits order*
- An attachment of allowances*
- A charging order
- Taking control of goods
- Insolvency
- Committal proceedings

4.2 The Council, in some cases, will consider a special arrangement.

4.3 The method of recovery for individual cases will be determined by the recovery team based on what is viewed as the most efficient and effective means of securing the monies due to the council at that time. They may resort to the above remedies in any order, however will only pursue one option at any time on a liability order with the exception of a charging order. Only when committal proceedings are to be considered must taking control of goods have been attempted previously.

4.4 In respect of council tax, the council has the legal right to request certain information once a liability order has been granted. Each liable person has 14 days to provide this information. This request for information is issued by the council or its enforcement agents.

4.5 It is a criminal offence to fail, without reasonable excuse, to provide the information requested or knowingly provide false information. A fine can be imposed.

4.6 The information provided will assist the council in identifying the most appropriate remedy to recover any outstanding debt.

4.7 Where there are more than one liable party, they will be classed as joint and severally liable and we will look to all parties to pay the debt. Each party is liable for the whole debt. We will take recovery action against any or all of the parties. We will not accept payment of a share of the bill as full and final settlement of their liability.

5. Special arrangements

5.1 Arrangements should be made in accordance with the arrangement procedures document.

5.2 Where a debtor makes an arrangement to pay but fails to keep to that arrangement, in the first instance of failure, the council will usually take reasonable steps to establish the cause of non-payment and in some circumstances offer to make a further arrangement. Any further failure to keep to an arrangement will result in another remedy being used to recovery the outstanding debt.

5.3 An arrangement will be altered, when appropriate, following a change in a person's circumstances which has affected their ability to pay the sum agreed.

6. Attachment of earnings order

¹* *action for council tax debts only*

- 6.1 Where appropriate and when a liable person's employment details are known, an attachment of earnings order will be served upon a person's employer.
- 6.2 The order will remain in force until the debt is discharged and paid in full. If the debt is paid in full separately from the order, the employer will be advised to cease taking deductions.
- 6.3 A notice will be issued to the liable person to advise them an order has been served on their employer along with a copy of the order.
- 6.4 Instructions and a copy of the relevant regulations will be included with the order issued to the employer.
- 6.5 In cases where a liable person will suffer demonstrable and unwarranted financial hardship because of an attachment to earnings order, the council will request they complete a financial request and if appropriate the order will be suspended whilst a special arrangement is made. If any special arrangement is not adhered to, the order will be re-instated and no further intervention will be considered.
- 6.6 A maximum of two attachment of earnings orders can be served on a liable person.

7. Attachment of benefits order

- 7.1 Where a liable party is in receipt of Income Support, Job Seekers Allowance, Employment and Support Allowance or any other benefit determined by law as deductible and it is appropriate, an attachment of benefits order will be issued to the appropriate agency.
- 7.2 Deductions are made at a fixed weekly amount determined by central government.
- 7.3 A notice will be issued to the liable person to advise them an order has been served and deductions requested.
- 7.4 Only one attachment of benefits order can be issued on a liable person.
- 7.5 If deductions from a person's benefit would not clear the debt within a reasonable period of time, an alternative remedy may be used.

8. Attachments of allowances

- 8.1 Where a liable party is an elected member of a relevant billing authority or relevant precepting authority, where appropriate, an attachment to allowances order will be made. This does not include members of parliament.
- 8.2 Deductions are made at the rate of 40% of the member's allowances. The allowances taken into account are those paid under Section 18 of the Local Government and Housing Act 1989 and Section 175 of the Local Government Act 1972.
- 8.3 The decision to serve an attachment of allowances order will be made by the Director of Residents and Business Services.

9. Restrictions on voting

- 9.1 In respect of council tax, where a liable party is a member of the local authority, whether solely or jointly liable for the council tax and they have fallen two months or more in arrears with instalments, they must declare their position at council meetings. They must also abstain from voting on financial matters relating to the income and expenditure of the billing authority.
- 9.2 Failure to declare their position shall make the member liable to a fine.

10. Charging orders

- 10.1 Where the arrears of a liable party are in excess of a sum determined by legislation and they own a property, if appropriate, the council can apply for a charging order to be placed upon that property. This order gives the council an equitable charge on the property, so if it is sold the council is automatically entitled to receive the outstanding amount from the proceeds of sale where there is sufficient equity remaining after priority charges have been settled.
- 10.2 Prior to a charging order being requested, the council will write to the liable person to advise them of our intention and to offer them an opportunity to clear their debt by an alternative method of recovery. This letter will state that the council can force the sale of the property if a charging order is granted.
- 10.3 Interest can only be charged in cases for non-payment of non-domestic rates, not council tax.
- 10.4 Once a charging order has been granted, the authority can look to recover the outstanding debt by another means as detailed in this policy.

11. Taking control of goods (use of enforcement agents)

- 11.1 The council may take control of a debtors goods, to satisfy the amount outstanding on a liability order.
- 11.2 Prior to a debt being passed to enforcement agents for collection, a notice will be issued advising that enforcement agents may visit if the debt remains unpaid after 14 days.
- 11.3 The council currently employs Bristow and Sutor to carry out the function of taking control of goods. Bristow and Sutor where possible, will comply with the National Standards for Enforcement Agents and the Local Code of Practice.
- 11.4 Once a debt has been passed to Bristow and Sutor, unless there are extreme circumstances, the council will not intervene with their actions, put their actions on hold, or request the debt is passed back to them.

12. Insolvency

- 12.1 The council can instigate bankruptcy or liquidation proceedings against any person that owes in excess of a sum determined by legislation.
- 12.2 The council will make enquiries into the financial position of a debtor prior to serving a statutory demand. This will include an enquiry with the Land Registry, and a credit check where applicable.
- 12.3 The council will, where reasonable and practicable, make enquiries with other departments/agencies to establish if there are any known reasons as to why bankruptcy or liquidation action should not be taken against a liable person or party.
- 12.4 The Council will write to the debtor advising them of their intention to make an application for bankruptcy or a winding up order. This notice will invite them to contact the council to discuss alternative arrangements to clear their debt. The council will include in this letter, details of the consequences of not paying and being made bankrupt. The letter will clearly state that the debtor may lose their home, business or assets.
- 12.5 A statutory demand will be issued that gives the liable party 21 days to pay the debt in full. If they do not pay the debt in full, a petition will be laid before the court to make a person bankrupt or to wind up a limited company.
- 12.6 Bankruptcy or liquidation proceedings do not affect the individuals or company's liability for ongoing council tax or non-domestic rates.

13. Committal proceedings

- 13.1 The council can only make an application to the Magistrates Court for a debtor's committal to prison after an attempt to take control of goods has been made.

- 13.2 Committal action will usually only be taken when it has been established that an attachment of earnings order or an attachment of benefits order is not appropriate.
- 13.3 A "pre committal" letter will be sent to the liable party advising them of the intention to make an application for their committal to prison and give 14 days for the debt to be paid in full or to contact the Council to discuss their arrears. This letter will advise that a prison sentence can be imposed for up to 90 days and that further costs will be incurred.
- 13.4 A summons to appear can be issued to all liable parties, however a warrant of commitment can only be made against one party. Where more than one party has been issued a summons, a senior manager will decide which party action is to be continued against.
- 13.5 A summons to appear will show the total amount due including costs incurred by both the Council and the enforcement agents. The debt will be broken down into financial years. It will clearly show the date, time and place of the hearing and how to contact the council. A means enquiry form will be included, and a recommendation made that this should be completed and brought to the hearing along with evidence to support any claim made on it.
- 13.6 If a debtor contacts the council and the Revenues, Benefits & Corporate Debt Recovery Service Manager is satisfied that an arrangement to pay is appropriate and all employment and benefit information is supplied, the initial hearing will be adjourned for a period of up to 6 months to monitor payments. If the arrangement is adhered to the case will either be adjourned indefinitely (sine die) or withdrawn and monitored. If an arrangement is not adhered to, the debtor will be required to attend the hearing and no further adjournments will be requested.
- 13.7 If a liable party does not attend a hearing, it is usual for the Magistrates Court to issue a warrant of arrest with bail and any related costs will be added to the outstanding debt. A letter will be issued to advise that the warrant has been awarded. It will give relevant information as to how to prevent their arrest. The debtor will be given a further date to attend.
- 13.8 If, after a debtor has been bailed, there is a further failure to attend, it is usual for the Magistrate's to issue a warrant of arrest without bail. There will be instances where the council and the magistrates deem it to be necessary to change a warrant of arrest with bail to one without bail. A letter will be sent to the debtor to advise them that the warrant has been awarded. It will give the relevant information as to how to prevent their arrest and that upon being arrested they will be detained until such time that the court is able to hear the case.
- 13.9 When a debtor appears at court, an inquiry into their means will be held by the Magistrate's Court. This inquiry will look at the conduct of the debtor for the whole period, from the date the first instalment became due to the date of the committal hearing. The Magistrate will determine if they are guilty of wilful refusal or culpable neglect. There is no legal definition of wilful refusal or culpable neglect. The Magistrates can then choose to do one of the following:
- commit forthwith for a term not exceeding 3 months
 - fix a term of imprisonment and postpone the issue of a warrant on terms
 - remit all or part of the debt
 - dismiss the proceedings
 - adjourn the proceedings
- 13.10 Where a term of imprisonment is made and postponed on terms, the terms are set by the Magistrate's and the council cannot amend or alter these repayments. If the terms are not adhered to, a debtor will be summonsed to a further hearing. A letter confirming the terms will be issued to the debtor. This will state the consequences of not paying.
- 13.11 At a further hearing, the Magistrates can commit forthwith or adjust the terms of repayment. They cannot change the sentence that has been imposed. Any payment made to date will be taken into consideration and the sentence reduced accordingly.

13.12 If a debtor is committed to prison, at any time the debt is paid in full, they will be released.

13.13 The council will not pursue the debtor after a period of imprisonment has been served. The debt will be written off in accordance with the write off procedures.

13.14 All summons for committal hearing will be either delivered by hand or by recorded delivery.

13.15 Committal proceedings can only be taken against individuals and not limited companies/partnerships.

14. Absconders

14.1 If a debtor moves address, moves away from the district, changes names and believes they will not have to pay, the council will trace them.

14.2 All debts will be vigorously pursued by the council.

14.3 The council will make enquiries with other departments and agencies to find absconders. They will also use all records that are legally available to use to trace absconders.

14.4 Absconders will be expected to pay their debt and any costs incurred in tracing them.

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