

## **WOKING BOROUGH COUNCIL – COUNCIL TAX RECOVERY POLICY**

### **1. PURPOSE OF THE POLICY**

The purpose of this policy is to outline the steps that may be taken by the Council in order to recover unpaid council tax. The policy has been written to ensure that all residents in Woking are treated equally when recovery action is taken.

The policy outlines the statutory recovery process and the options available to the Council when considering enforcement action. Actions that can be taken once a liability order is obtained can have serious consequences for the debtor, and this policy outlines the steps that may be taken in considering the various options available, taking account of each individual debtors circumstances.

### **2. RECOVERY PROCESS UP TO THE LIABILITY ORDER STAGE**

#### **2.1 Annual Billing**

A council tax bill will be served on every liable person (this may include companies where relevant) at least 14 days in advance of the start of the tax year (1<sup>st</sup> April). Council tax bills will also be issued to new occupiers as soon as possible.

#### **2.2 Payments by Instalments**

We offer a number of different payment methods and dates for council tax to be paid. Details can be found on the council tax bill. It is essential these payments are received on or before their due date. If payments are not received on or before their due dates, recovery action may be taken.

#### **2.3 Reminder Notices**

If payments are not made in accordance with the instalments , a reminder notice will be issued. Reminder notices give seven days for payment of the overdue instalment to be made, in order to bring the account up to date. If payment has not been made after a further seven days (including any additional instalments which may have become due), the right to instalments will be lost, and the Council may apply to the Court for a liability order. If the overdue instalment is paid but a future instalment is missed, a further reminder notice may be issued.

#### **2.4 Final Notices**

If a third instalment is missed, a final notice may be issued. At this point, the right to instalments is lost and the remaining balance becomes immediately due in full. Failure to pay within seven days of the date of the reminder may result in a summons being issued. A final notice may also be issued where a liable person has vacated the property and not paid their remaining balance.

A maximum of three reminders may be issued in a financial year; a maximum of two instalment reminders and one final notice.

## **2.5 Summons**

If the council tax payer fails to pay the amount shown on the reminder or final notice, a court summons may be issued. The summons gives details of the court hearing, including date, time and location. The costs of issuing the summons will be added to the debt when the summons is issued.

The council tax payer will be encouraged to contact the Council immediately to discuss their account, and if appropriate, a payment arrangement may be offered. If a payment arrangement is made before the hearing, the Council may still ask the Magistrates to grant a liability order to secure the debt. Providing the payment arrangement is maintained, no further recovery action will be taken.

If the amount including costs remains unpaid the Council may seek a liability order at the hearing. Where the court finds the debtor liable to pay, it will issue a liability order for the sum payable and costs reasonably incurred.

## **3. LIABILITY ORDER HEARING**

At the court hearing, the Council must satisfy the Magistrates that we have followed the statutory recovery process detailed above. The Council must also confirm the sum is payable by the debtor, and that the debt has not been paid. If the Magistrates are satisfied with the evidence presented, they must grant a liability order.

A liability order is a decision by the court confirming the debtor is liable to pay the council tax due, and has not done so in accordance with the law. The liability order gives the Council further powers of enforcement. In each case the Council will decide on the most appropriate course of enforcement action based on the size of the debt and the personal circumstances of the debtor. These options are explained in further detail in section 5.

The debtor has the right to attend court to present their case. A liability order may not be granted if the debtor has a valid defence, such as:

- The council has not demanded the amount in accordance with the Regulations
- The debtor has paid the amount in full including costs
- The debtor is not the person liable for the council tax
- More than 6 years have passed since the council issued a bill for the amount

It is not a valid defence if the debtor is unable to pay because:

- They are in receipt of benefits
- They cannot afford to pay what is owed
- They have applied for council tax support, or are awaiting an assessment
- They have appealed to the Valuation Office against their council tax valuation band, because a discount has not been awarded or they believe they are not liable to pay

These lists are not exhaustive.

A liability order gives the Council the power to recover the council tax using the methods listed in section 5.

## **4.0 REQUEST FOR FINANCIAL INFORMATION**

A letter may be issued following the liability order being granted and before any enforcement action is taken. The letter includes a financial information form which requests details of the debtors' income and expenditure, which will be used to help the Council consider the circumstances of the debtor and appropriate enforcement actions.

The debtor must complete and return the form within 14 days of the request being made. If the form is not returned, the Council may continue with enforcement action. The letter also warns of the possibility of the debt being passed to the Council's enforcement agent, to collect the debt on behalf of the Council. This action may result in additional costs being incurred.

If the form is not completed and returned inclusive of employment details, the Council may take enforcement action against the debtor.

If the debtor fails, without reasonable excuse to supply the required information, they will be guilty of an offence and on conviction may be fined by the Magistrates Court up to a maximum of level 2. If the debtor provides false information they could also be guilty of an offence and may be fined on conviction to a fine up to a maximum of level 3.

The Council may also carry out its own enquiries which may include using tracing agents to establish the debtors employment details.

## **5.0 STEPS TAKEN TO RECOVER THE DEBT FOLLOWING A LIABILITY ORDER**

If the financial information form has been returned, the Council may agree to an arrangement. Enforcement of the liability order will be held until either the agreed arrangement is cleared, or there is a default on the arrangement .

The recovery options available are as follows:

### **5.1 Attachment of Earnings**

Where a debtor is employed, an Attachment of Earnings Order may be issued.

The Attachment of Earnings Order will be issued to the debtor's employer, which requires them to make deductions from the debtor's wages. Legislation sets out a sliding scale for the percentage amount that is deducted dependent on earnings.

The Order remains in force until either the balance is clear, or the Order is withdrawn by the Council. The Council may issue a maximum of two Attachment of Earnings Orders at any given time.

### **5.2 Deductions from Benefits**

Where a debtor is in receipt of certain prescribed benefits, the Council may request the Department of Work and Pensions to make deductions. The rate of deduction is set out in legislation.

Deductions continue until the council tax is cleared, or the debtor's benefit entitlement ends.

### **5.3 Attachment of Members' Allowances**

Where a liability order has been obtained, and the debtor against whom the order was made is an elected member of the Council or Surrey County Council attempts may be made to secure payment by attachment to his/her member allowance.

### **5.4 Enforcement Agents**

The Council may instruct an enforcement agent to collect the outstanding council tax debt on the Council's behalf. This action may be considered appropriate if:

- The request for financial information has not been returned (as advised within the letter)
- A payment arrangement fails
- Other enforcement actions are not considered appropriate or have failed

The enforcement agent may agree a payment arrangement with the debtor, or take control of goods to be sold at auction to cover the debt.

The Taking Control of Goods procedure and fees are set out in legislation.

Enforcement agents must follow the Taking Control of Goods national standards issued by the Ministry of Justice. All enforcement agents employed by the Council are members of The Civil Enforcement Association (CIVEA), the principal trade association representing enforcement agencies.

### **5.5 Charging Orders**

If the debtor owns their property, the Council may decide to apply for a Charging Order to be placed on it. This is an Order that places a registered charge on the debtor's property to safeguard the Council's financial interest. The debt is paid from the proceeds of sale of the property when it is sold. The charge includes the debt, costs and interest granted by the court. The court will also charge a statutory fee, and the Council's solicitors may charge a fee for preparing the case and attending court.

This type of action may be used where:

- A property is currently up for sale
- Overall arrears exceed statutory limits
- The debtor's whereabouts are unknown
- The debtor is resident abroad

This list is not exhaustive.

Once a charge is obtained, the Council may instruct their solicitors to ask the court to force a sale of the charged property.

### **5.6 Committal**

An application to the Magistrates Court to have a debtor committed to prison may be considered in appropriate cases if enforcement agents have been unable to find any or sufficient goods to pay an outstanding debt. The purpose of committal applications is to

coerce payment, i.e. it can be used as a tool of collection. It should not be viewed as punitive i.e. a punishment.

Committal action against a debtor may be considered appropriate when:

- Civil Enforcement Agents have not been able to recover all of the debt
- The debtor has no property or assets
- The debtor has previously failed to pay in accordance with payment arrangements
- The debtor has failed to provide employment or benefit details
- The debtor is not considered vulnerable
- It appears that the failure to pay may be the result of **wilful refusal** or **culpable neglect**
- Other methods of recovery action are not appropriate

A letter is issued to the debtor warning that committal action is to be taken. The Council will allow 14 days from the issue of the warning letter before issuing a committal summons. This will allow the debtor an opportunity to contact the Council and discuss the outstanding balance before a committal summons is issued.

If no agreement is reached to discharge the debt and the balance remains unpaid, a committal summons may be sent. This orders the debtor to attend the Magistrates Court for an enquiry in to their means and conduct, both currently and at the time of the debt falling due. This enquiry can only be conducted in the presence of the debtor, and if they fail to attend court a warrant for their arrest can be applied for and issued.

If the Magistrates court are satisfied that the council has complied with legislation and if they find the debtor has not paid through wilful refusal or culpable neglect they have the following options available to them:-

<b>Court Order with suspended sentence</b>
The debtor could be sentenced to a term of imprisonment but this sentence will be suspended provided they keep to the conditions of the suspension. This is usually an order to pay a set amount to clear the debt. If they fail to do what is ordered by the Magistrates Court the Council will apply for the debtor to be brought back to court for the prison sentence to be enforced.
<b>Court Order without a suspended sentence</b>
The debtor could be ordered to pay a set amount. If the debtor does not keep up the payments, they are ordered to come to court again to explain why they have not paid. The Magistrates Court will then decide what to do next. The Council will apply for the order to be backed by a suspended sentence.
<b>Remit (write off) all or some of the debt</b>
The Magistrates Court can remit all or some of the council tax owed depending on the debtor's circumstances. If only some of the debt is written off, the Magistrates Court may make a Court Order for the remainder.
<b>Take no action</b>
The Magistrates Court may decide that no further action is required.
<b>Adjournment</b>
If more information or evidence is needed before a decision can be made, the case can be adjourned until a later date.
<b>Committal to Prison</b>
The Magistrates Court can decide to send the debtor to prison immediately for up to 90 days.

## **5.7 Insolvency**

Where the debt remains unpaid and other methods to recover the debt have been unsuccessful or deemed inappropriate, the Council may apply for a bankruptcy or winding up order to be issued in appropriate cases against an individual or company, where the debt exceeds statutory limits.

Before insolvency action is commenced, a warning letter will be sent to the debtor giving them a last chance to pay before insolvency action starts.

If the full amount outstanding including costs is not paid or an acceptable arrangement agreed, the Council may pass the case to legal to commence bankruptcy / winding up proceedings.

If bankruptcy action or winding up proceedings are commenced, this will incur further court fees and legal charges for preparing the case and attending court, thereby increasing the debt owed to the Council. These costs may be substantial.

## **5.8 Arrangements for Payment**

Payment arrangements may be considered at any time of the proceedings.

If a liability order has been granted, the Council may not accept an arrangement unless the debtor has provided their employers' details, which may be formally requested as set out in section 4.

Payment arrangements will be monitored on a regular basis and if payments are not made as agreed, further recovery action will be taken.

## **6. WRITE OFFS**

In certain circumstances a council tax debt may be considered for write off. A write off may be recommended in the following circumstances:

- Remission by the Court
- Imprisonment (committal)
- Bankruptcies and liquidations
- Death of the charge payer
- Debtors who cannot be traced
- Small balances and where the amount is uneconomical to collect

Please note this list is not exhaustive.

In each case, a write off will be recommended by an officer, and approved or declined by the appropriate officer or member, in accordance with delegated authority set out in the Council's constitution.

## **7. TRACING**

If correspondence is returned to the Council or we become aware that the debtor has absconded, we will attempt to trace that person using internal and external systems. Where all such avenues have been unsuccessful and, where the value of the debt is cost effective to pursue, it may be referred to external private tracing agents.

## **8. HARDSHIP**

The Council already has a Council Tax Hardship Relief policy in place (agreed by the Executive Committee at a meeting on 24<sup>th</sup> January 2013).

However, if a debtor is experiencing considerable financial hardship the Council will look at their case on its own merits and may agree an extended payment arrangement. We will always expect the debtor to pay the current years' council tax plus an amount towards the arrears.

When dealing with unpaid council tax debts, officers will make every effort to ensure that debtors on a low income are made aware they may apply for council tax support and that those experiencing considerable financial hardship are advised to seek independent debt advice.

## **9. VULNERABILITY**

We recognise that certain groups of debtors may be vulnerable. Whilst not all debtors in these groups may be vulnerable, we will consider debtors individual circumstances where potential vulnerability is identified. Checks will be undertaken throughout the recovery process.

These groups may include, but are not restricted to:

- Pregnant women or recent parents
- Long term sickness, serious illness or frailty
- Elderly
- Physical disability
- People with learning difficulties or mental health problems
- Recent bereavements
- Severe financial difficulties and/or in receipt of benefits
- Debtors with communication difficulties
- Victims of domestic violence

Where we are aware that a person may be vulnerable we will adapt our council tax recovery procedures accordingly to minimise any hardship or distress.

We recognise that certain debt recovery options are not appropriate where a customer is identified as vulnerable, and we will act to personalise the action we take to reflect this.

## **10. PENALTIES**

The Council may impose civil penalties in certain circumstances, in accordance with the statutory limits set out under Schedule 3 to the Local Government Act 1992 (and subsequent Orders). A penalty may be imposed where:

- A person fails to supply certain information regarding liability to the Council which the Council has requested, or deliberately supplies false information
- A person fails, without reasonable excuse, to notify the Council that an assumption the authority has made as to exemption or discount is incorrect or that relevant circumstances have changed.

There is a right of appeal to the Valuation Tribunal against the imposition of a penalty. A penalty is not payable whilst it is subject to appeal.