

Council Tax

Debt Recovery Policy

Index	Page
<u>Purpose</u>	<u>3</u>
<u>Introduction</u>	<u>3</u>
<u>The Stages leading up to the Issue of a Liability Order</u>	<u>4</u>
<u>The Stages following the granting of a Liability Order</u>	<u>5</u>
<u>Liability Order Powers</u>	<u>6</u>
<u>Committal Proceedings</u>	<u>8</u>
<u>Background References</u>	<u>8</u>
<u>Appendix A Council Tax Recovery Process Map</u>	<u>9</u>
<u>Appendix B Council Tax Vulnerable Person Policy</u>	<u>10</u>
<u>Appendix C Bankruptcy Checklist</u>	<u>12</u>

Purpose

The purpose of this Council Tax Debt Recovery Policy is to provide the principles, good practice and guidance for how Council Tax is collected and recovered from individuals who have not paid. The Policy aims to ensure the actions of the Council Tax Service are fair and reasonable in the recovery of debt.

The majority of residents in Havering, ninety seven percent of them, pay their Council Tax on time. The Council Tax Debt Recovery policy focusses attention on the remaining three percent of individuals who either cannot or will not pay their Council Tax.

Introduction

The administration, collection and enforcement of Council Tax is set out in law.

An illustration of the collection and recovery stages is shown at Appendix A. The first stage begins with the issue of a Council Tax Bill with potential ending stages of Charging Order, Commitment to Prison or Bankruptcy where payment is not forthcoming.

The Council Tax Service will engage with the individual to avoid debts building up and minimize charges. The Council provides a significant amount of information on the back of its statutory notices (bill, reminder notice, etc.) about how to pay the Council Tax as well as referring to its website for more information about how to reduce the Council Tax bill.

Where an individual is having financial difficulties paying their Council Tax, they are encouraged to engage with the Council Tax Service for assistance. Council Tax Support, disregards, exemptions and other reductions will be considered to assist reduce some or all of the Council Tax owed as appropriate.

The recovery actions the Council Tax Service can be take may have serious consequences for an individual. Therefore, full account is taken of the Council Tax Debtor's circumstances at every stage of the process. Bankruptcy, Charging Order and Committal proceedings are considered only as a last resort and after all other possibilities have been exhausted.

Particular regard has been given to the recommendations contained in the focus report issued by the Local Government Ombudsman: *Can't pay? Won't pay? Using bankruptcy for council tax debts*.

The Services collecting and recovering Council Tax may use SMS messaging, email and voicemail to communicate with a Council Tax payer or Debtor. This is a discretionary service which may be used at any time and during any stage of the collection and recovery process to encourage payment.

The Stages leading up to the Issue of a Liability Order

Council Tax Bill

A Council Tax bill is issued at the start of the tax year to each person shown on the Council's records as responsible to pay the Council Tax for a property. Council Tax bills are also issued during the year when a person/s first moves into a property purchases a property or is a property owner and the property has become empty.

Normally, Council Tax is paid by ten or twelve monthly instalments across the year. Where payments are not received on the instalment due date, recovery action will be triggered and a reminder notice is issued.

The Council Tax Service may remind the individual (by SMS message or email) to pay their instalment and so avoid a reminder notice.

Reminder Notice

A reminder notice can be issued the day after the instalment has fallen due. The reminder notice will require payment of the amount stated within seven days. Where payment is not made, the right to pay by instalments is lost and the full amount remaining for the year is due within a further seven days.

Failure to pay the full amount in the further seven days will lead to the issue of a summons.

The individual may bring their instalments up to date within the first seven days of the issue of a reminder notice. In which case, they remain on instalments. However, if later on, the Council Tax payer falls behind on their instalments again, they will receive a final reminder notice.

Final Reminder Notice

When a Council Tax payer falls behind with their instalments again, after already having received one reminder notice earlier in the year, a final reminder notice is issued and the right to pay by instalments is lost. The Council Tax remaining for the rest of the year is now due. A final reminder notice can also be issued without a previous reminder notice, where, for instance, the bill relates to a previous tax year or the account has been closed.

Summons

If the person who is liable to pay the Council Tax fails to pay the amount shown on the reminder notice or final reminder notice within fourteen or seven days respectively of their issue, a summons can be issued.

A summons is a letter to the Council Tax Debtor giving notice that Havering Council is going to Court to obtain a Liability Order against them. A minimum two weeks' notice of the Court hearing date is given on the summons and the individual is advised that costs have also been incurred by the Council.

Council Tax Service will not issue a summons on an account where the overall balance is less than £50 outstanding. Instead contact may be made by telephone or by e-mail to discuss the discharging balance.

The Council Tax Debtor will be urged to contact the Council immediately to discuss their account. The Council will advise on the best course of action and discuss payment arrangements suitable to both parties. If the amount remains unpaid the Council will seek a liability order at the Court Hearing. The Council Tax Debtor has the opportunity to attend Court although the Magistrate can only decide whether the Debtor is liable, valid notices have been issued and the debt is unpaid.

At the Court hearing, the Magistrate must issue a liability order if they find the Debtor is liable, notices have been correctly issued and the Council Tax remains unpaid. At this stage, the Magistrate cannot take into account the Debtor's personal circumstances or make orders for payment. Costs will also be requested and granted at this hearing.

The Council Tax Service encourages individuals to approach them as early as possible to avoid recovery action and costs. The Council Tax Debtor can still make an arrangement for payment after the liability order has been granted.

The Stages following the granting of a Liability Order

At the Court hearing of the summons, a liability order and costs are granted by the Magistrate if all or part of the Council Tax debt summonsed remains unpaid.

The liability order enables the Council Tax Service to recover the debt by anyone of the following means:

- Attachment of earnings
- Deductions from ongoing welfare benefits
- Attachment to Members' Allowances
- Enforcement Agents (Bailiffs)
- Charging Orders
- Insolvency
- Committal to prison

More detail is provided under the **Liability Order Powers** below.

If an arrangement has been made with the Debtor, the Liability Order will not be activated while the arrangement is kept up to date by the Council Tax Debtor.

The council tax service has introduced the service of sending a SMS text message, voicemail message and an e-mail service to debtors where contact details are held, after the liability order hearing. This gives the debtor an opportunity to speak to the Recovery Section before any further enforcement action is taken. Payment plans, financial and employment details can be discussed in detail at this point of contact.

The Council will undertake checks on each case to determine the most appropriate method of enforcement. The decision as to which recovery method to use or whether to agree a payment arrangement will be based on information available regarding the Council Tax payer's financial circumstances, household composition, their proposal to pay and whether the person meets the Council's definition of vulnerability (See Appendix A).

If the Council Tax Debtor continues to avoid contact, the Council will protect the public purse and seek the most cost effective and efficient method of recovery as soon as reasonably practicable after the liability order has been granted.

Liability Order Powers

A Liability Order gives the Council certain powers of enforcement which are listed below. In addition, the Debtor is now under a legal duty to supply financial information when asked to do so by the Council.

In each case, the Council will decide on the most effective course of action based on the size of the debt, the history of the case and the personal circumstances of the debtor. The Council will also have regard to its equalities duties.

The recovery options available are described below:

- **Attachment of Earnings:** This is a statutory power that allows the Council to order the debtor's employer to make deductions from the debtor's wages at a rate specified by legislation. The Council has no power to reduce the amount to be deducted as it is set by law.

The deductions apply to the Debtor's net earnings after tax and national insurance have been deducted. The employer is also entitled to an administration fee of £1.00 from the debtor for every deduction made.

An Attachment of Earnings Order may be stopped if there are exceptional circumstances to justify its withdrawal. Up to two Attachment of Earnings Orders making deductions from wages can be in place at the same time against the Council Tax debtor. This course of action is only appropriate where the debtor is in stable employment and their salary level is sufficient to clear the debt.

The Debtor's employer has a legal obligation to make the deductions. Statutory Fines may be imposed on the employee if deductions are not made.

- **Deduction from Welfare Benefits:** The Council may require the Department for Work and Pensions (DWP) to make weekly/monthly deductions at rates set by legislation from a debtor's welfare benefit. The debtor must be in receipt of one of the following benefits: Income Support, Jobseeker's Allowance (income based), Employment Support Allowance (income related), Universal Credit or Guarantee Pension Credit.

The rate of deduction is very low and if there is a large debt, the Council may choose not to request a deduction and pursue alternative more effective means of recovery.

- **Attachment to Members Allowances:** This only applies to debts owed by elected Members of Council and allows the Council to claim up to 40% of their allowances to clear the unpaid Council Tax.

- **Charging Orders:** A charging order allows the Council to register a charge, a security interest, in the debtor's property. It can be applied where the debt exceeds £1,000.

The charge covers the debt amount, costs and interest granted to the Council. Before making the application, the Council will consider whether the debtor has sufficient equity

in the property to cover the Council Tax debt. This means of recovery is less punitive than committal to prison or bankruptcy and may be more suitable for vulnerable debtors who have insufficient income to make an acceptable arrangement.

While the charge will safeguard the Council's financial interests, a payment arrangement should still be sought from the debtor so that some income is generated.

Once a charge is obtained, the Council has the option to force a sale of the charged property after having regard to the debtor's vulnerability and adherence to any payment arrangement.

- **Insolvency:** The Council may apply for a bankruptcy or winding up order to be issued against an individual or company respectively where the debt exceeds £5000.00. This course of action will be considered where there are known assets (where the asset is the property that is the subject of the debt a charging order will be considered but this will not preclude bankruptcy action – there may for example be insufficient equity in the property or there may be multiple debts owed to the Council which could be satisfied through insolvency action).

Substantial costs are incurred by the Council which are payable by the debtor if a bankruptcy order is issued. The potential consequences are grave, such as the loss of the debtor's home. Council Tax Senior Officers will therefore, thoroughly examine the debtor's personal circumstances and fully consider the consequences of the order on the debtor. Particular attention is given to vulnerable persons when consider a bankruptcy order as a recovery method. The bankruptcy checklist at Appendix C is used to ensure these matters are considered.

- **Enforcement Agents:** The Council may use Enforcement Agents (Bailiffs) to take control of goods of the debtor.

The Enforcement Agent may take control of goods to the value of the debt owed under the order. Certain goods will not be taken by the Enforcement Agent under the law and these include mobile homes resided in by the debtor, bedding and furniture required to satisfy basic domestic needs including white goods.

Also, the Enforcement Agent may not take control of goods where a child or vulnerable person is the only person present in the premises.

The Enforcement Agents are advised to pro-actively inform debtors of any discounts or exemptions that they may be entitled to and where possible, obtain employment and financial details for attachment of earnings. The Enforcement Agents are expected to operate in a fair and consistent manner and will encourage the debtor to seek advice to help reduce their Council Tax debt.

An arrangement for payment can be made by the debtor with the Enforcement Agent to avoid the taking control of goods. The Enforcement Agent will encourage the debtor to contact them by means of SME, telephone and email to make an appropriate arrangement.

Enforcement agent fees are incurred and payable by the debtor at the following times.

£75.00	The liability order is passed to the Enforcement Agent for collection. Payment of the debt and fee is required within 7 days of issue of the notice.
£235.00	On a visit by the Enforcement Agent to take control of goods. If the debt exceeds £1,500, further fees will be payable by the debtor.
£110.00	On the sale or disposal of the goods taken. . If the debt exceeds £1,500, further fees will be payable by the debtor.

Committal Proceedings

Committal proceedings will always be considered as a last resort. The Council will review the individual's circumstances using all available information prior to this action, particularly with regard to any vulnerability of the debtor. The Council Tax Service will consider all other recovery options and have referred the case to the Enforcement Agent before commencing committal proceedings.

The debtor can be incarcerated for up to three months for non-payment of Council Tax.

The process is initiated through the Court by means of a summons. If the debtor fails to attend Court, an arrest warrant can be issued to ensure their attendance.

At Court, the Magistrates can conduct an enquiry into the debtor's means and make an order for payment, issue a suspended sentence with a payment order, order commitment to prison or remit the debt partly or fully if *willful refusal* or *culpable neglect* is not found.

If the debtor is sent to prison, the Council Tax is still be payable although the Council will not be able to take any further enforcement action to recover the debt.

Background References

- Local Government Act 1992 - <https://www.legislation.gov.uk/ukpga/1992/14>
- SI 1992 No.613 The Council Tax (Administration and Enforcement) Regulations 1992 – <https://www.legislation.gov.uk/uksi/1992/613/made>
- Can't pay? Won't pay? Using bankruptcy for council tax debts – Local Government Ombudsman.
- SI 2013 No.1894 Taking Control of Goods Regulations
- SI 2014 No. 1 The Taking Control of Goods (Fees) Regulations 2014
- Tribunals, Courts & Enforcement Act 2007

- The Taking Control of Goods Regulations 2013
- The Taking Control of Goods (Fees) Regulations 2014
- The Certification of Enforcement Agents Regulations 2014
- CIVEA Code of Conduct and Good Practice Guide 2012
- Debt collection and mental health: ten steps to improve recovery (The Royal College of Psychiatrists and Money Advice Trust)

Council Tax Recovery Process Map

Bill

The Bill gives 14 days' notice of the first instalment or the total amount due. Payment normally required in 10/12 instalments

First Reminder

Instalment not paid on due date. 7 days given to pay instalment or full amount must be paid within a further 7 days.

If still not paid, summons issued.

Final Reminder

Second failure to pay by instalment due date.

Total amount not paid by due date.

If not paid, summons issued.

Summons

Summons gives 14 days' notice of liability order hearing. £105 costs incurred.

Liability Order

Liability Order issued at Hearing if not paid. £10 costs incurred at court hearing.

Attachment of Earnings

If employment details are held.

Deduction from Benefits

If in receipt of certain benefits.

Notice of Enforcement Agent (Bailiffs)

10 days to make payment or send to bailiff. £75 fees incurred.

Enforcement Agent (Bailiffs) Action

£235 fees incurred and 7.5% if debt is over £1,500. Agent can remove goods to the value of the debt and costs outstanding.

Charging Order

If debt is over £1,000 and property owned.

Committal Action

Judge can make order for payment, suspend sentence, remit debt or commit debtor to prison.

Insolvency

If debt over £5,000 and sufficient assets.

Council Tax Vulnerable Persons Policy

Introduction

This policy defines the circumstances in which the Council will consider a person to be vulnerable. This will not preclude the Council from taking any form of recovery action but it will ensure that the circumstances of the vulnerable person are fully considered prior to any action being taken.

The Council will take account of an individual person's circumstances at each stage of Council Tax collection. In particular the Council will seek to identify any cases where a person appears to be vulnerable in the latter stages of recovery, to ensure the most appropriate course of action is taken.

Specific regard is given to protecting children and vulnerable adults when taking control of goods. An enforcement agent (previously known as a bailiff) may not take control of goods where a child or vulnerable person is alone on the premises. The local authority will not recover fees due at the enforcement stage from a vulnerable person unless the enforcement agent has given adequate opportunity for the debtor to get assistance and advice in respect of the exercise of enforcement powers.

While there is no definition within any of the Council Tax regulations of "vulnerable person" this policy provides guidance as to what may constitute vulnerability and what actions should be taken to identify and deal with the vulnerable debtor.

Definition

A vulnerable person may include, but is not restricted to:

- A person who has a physical or sensory impairment, learning disability or mental health problem (The Royal College of Psychiatrists and Money Advice Trust's *Debt collection and mental health: ten steps to improve recovery* provides useful guidance and further definition of what constitutes a mental health problem) and who may be unable to protect themselves from harm or abuse
- Elderly, frail or confused older people
- The seriously ill (including long term)
- The recently bereaved
- Pregnant women (or those who have recently given birth)
- Recently unemployed people
- Those who have obvious difficulty in understanding, speaking or reading English
- Anyone suffering severe hardship

The Council will use all of the information available including council tax and council tax support records to identify vulnerability. Other Council departments may also be contacted such as Housing or Social Services where this is appropriate.

Where a person is in receipt of Income Support, income-based Jobseekers' Allowance or Employment Support Allowance or Universal Credit, a deduction from benefits will be considered in preference to other methods of recovery. Where employment details are known an attachment to earnings will be considered (over enforcement agent action) although the viability of this will depend on the size of the debt and the amount likely to be recovered under the attachment.

If a person is considered to be vulnerable before or during the compliance stage additional efforts will be made to establish contact with the individual before advancing to the next stage. This may include a visit to the customer in their home or the offer of an appointment to discuss the situation.

Where appropriate Adult Services will be engaged to find out whether any relevant details are held and if relevant a person or body authorised to act on the person's behalf may be contacted (this may include another organisation such as the Citizens' Advice Bureau, someone with power of attorney or a person for whom authorisation has been received to discuss their Council Tax) before taking further action.

If a person is found to be vulnerable during the enforcement stage and the vulnerability of the person (or the extent of it) was not previously known, the Enforcement Agent will refer the case back to the Council Tax Service for further review as indicated above. The enforcement fees may be withdrawn, depending on the outcome of the review.

Where it has been established that the person is vulnerable but, after reasonable attempts to resolve the situation by other means, it is still necessary to proceed to the enforcement stage, authorisation will be sought from the Collection and Recovery Manager before further action is taken.

Consideration may also be given to other methods of recovery such as charging order, bankruptcy or committal to prison but in each case, careful consideration will be given to any vulnerability and guidance contained in the Recovery Policy will be followed.

Bankruptcy Checklist	Yes/No
Is the total debt over £5,000	
Is there a liability order?	
Is the debtor the owner of a property in England and Wales or own a substantial asset such as shares, annuities or business interest with a minimum value of £5000.00?	
Do any other departments within the Council, such as overpayment, income, e.t.c have debts that can be included?	
Has a 'vulnerability' check been carried out, ie with Adult Social Services, Mental Health Team, e.t.c? – see Council Tax vulnerable person's policy.	
Is there any correspondence to indicate that the property is up for sale or may be sold in the very near future etc? In which case a charging order maybe more appropriate?	
Is there any evidence to suggest the property may have been let out or is empty? This may impact on liability and service of documents as well as whether the property may be disposed of as part of the bankruptcy.	
Is the debtor receiving any benefits? Debtor to be encouraged to apply if entitled. We will look at length of time on benefits, age of debtor and consider whether alternative methods of recovery such as charging order or attachment of benefits should be implemented.	
Is there a suitable amount of equity in the property, which will clear the debt owing to the Council and bankruptcy costs?	
Has an insolvency search been carried out to see if the Official Receivers are already aware of the debtor?	
Do we have PAYE employment details which will allow an Attachment of Earnings?	
Do we have a satisfactory address for the debtor to allow the service of documents?	
Is the debtor entitled to any further discounts or exemptions?	
When was the last contact or payment?	
Has a home visit been undertaken?	
Has a pre-bankruptcy warning letter been issued to the debtor?	
Has a record of all of the above been saved on the system and or in the folder for the case?	
Date checklist completed	
Senior Recovery Officer Review	