



NEWCASTLE·UNDER·LYME
BOROUGH COUNCIL

COUNCIL TAX AND BUSINESS RATES RECOVERY PROCEDURE

Revised March 2017

SECTIONS

- 1. The Council's Aims**
- 2. The Revenues Service**
- 3. The Legal Framework**
- 4. Demand Notice**
- 5. Joint & Several Liability**
- 6. Instalments**
- 7. Methods of Payment**
- 8. Reminder / Final Notices**
- 9. Summons and Application for a Liability Order**
- 10. Liability Order**
- 11. Payment Arrangements**
- 12. Attachment of Earnings**
- 13. Attachment of Members Allowances**
- 14. Attachment of DWP Benefits**
- 15. Enforcement Agents**
- 16. Further recovery options available to the Council**
- 17. Committal Proceedings**
- 18. Charging Orders**
- 19. Bankruptcy**
- 20. Winding Up Procedures**

Appendix - Vulnerability Criteria

1.0 The Council's Aims

- 1.1** The Council's aims are to
- Help minimise debts to the Authority and improve the Council's income levels through the efficient and effective collection of Council Tax and Business Rates.
 - Effectively pursue all amounts due to the Council so that all taxpayers and ratepayers who have the ability to pay do so.
 - Ensure that the debtor's circumstances (where known) are taken into account when deciding the most appropriate form of recovery action to take.
 - Treat individuals consistently and fairly, regardless of age, sex, gender, disability, race and sexual orientation.
 - Protect individual rights under Data Protection and Human Rights legislation.
- 1.2** A prime intention of the Council is to operate sensitive debt recovery procedures which do not place the individual in hardship and where possible do not affect a business's financial viability. This will be achieved by having realistic, flexible methods of payment that can be adapted to the circumstances of the taxpayer or ratepayer.
- 1.3** Prevention is the first essential step in the effective recovery of debt. There are a number of measures that can be taken to minimise indebtedness at an early stage which reduces the necessity for costly enforcement action. This not only reduces cost but also works towards avoiding potential hardship for taxpayers and ratepayers.
- 1.4** To achieve this we believe it is essential that we promote early contact with taxpayers and ratepayers, establish the correct amount that is payable and make mutually acceptable arrangements to pay.
- 1.5** At all stages of billing, collection and recovery of Council Tax and Business Rates, the Council will give customers the opportunity to make individual arrangements to pay. Where a customer defaults on the arrangement this facility will be withdrawn and the most appropriate recovery action then be taken (e.g. attachment of earnings).
- 1.6** The Council will promote the take-up of all available reductions for Council Tax and Business Rates to reduce our customers' liability where circumstances allow.
- 1.7** The Council when discharging the functions to which this policy relates will comply with the relevant legislation and have regard to relevant Government guidance and policy.

2.0 The Revenues Service

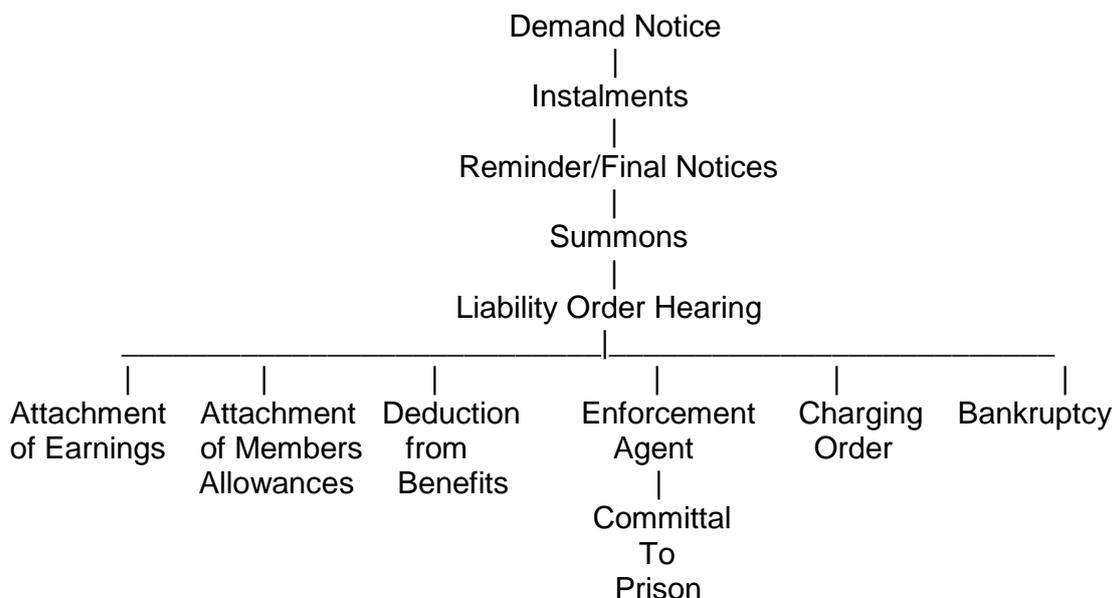
- 2.1** The Revenues Service will;
- Provide help and advice to taxpayers and ratepayers in a clear, accurate and understandable way.
 - Maintain contact details to ensure quick and easy contact can be made where the need arises.
 - Ensure bills, reminders and other notices are issued in a timely manner, meeting all legal requirements.
 - Encourage taxpayers and ratepayers or their representatives to make

contact as soon as possible where they will have difficulty in making or maintaining their payments

- Treat taxpayers and ratepayers as individuals taking account, wherever possible, of known personal circumstances to determine the most appropriate action to be taken.
- Keep the taxpayer and ratepayer informed of the action being taken and other types of action that may be taken.
- Provide support for vulnerable taxpayers and ratepayers through home visits as required.
- Promote and work in partnership with local debt advice agencies to ensure those in financial difficulty get good quality debt advice.
- Liaise with the Council's Benefits Service to identify accounts where outstanding benefit issues need resolving.
- Support businesses who are suffering financial difficulty by giving advice regarding relief, including mandatory and discretionary relief and small business rate relief.
- Deal with complaints in line with the Council's Corporate Complaints Policy.
- Work with others to check the information given to the Council by taxpayers and ratepayers and to improve the Council's services. The Council may give information to other organisations as the law allows, for example to safeguard against crime.

3. Legal Framework

The legal framework for the enforcement of Council Tax is provided by Schedule 2 and Schedule 4 of the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992 (SI.1992/613)



4 Demand Notice

- 4.1 Annual bills are issued mid-March prior to the financial period 1 April to 31 March
- 4.2 When a customer tells us that he/she has occupied a property we will send a bill and give the statutory number of instalments.
- 4.3 When a customer tells us that he/she has vacated we will issue a closing account and process any refund as appropriate.
- 4.4 Where there is a change in circumstance or an amendment to the amount due or the instalment amounts we will issue an adjustment notice.
- 4.5 When a bill is sent out later than 30 April, for example when someone moves in part way through the financial year, the payment period will be shorter and there will be fewer instalments

5. Joint & Several Liability

- 5.1 Joint and several liability in law means that all, or both, the jointly liable parties are each responsible for the whole liability. As a result the billing authority can recover the whole amount due from any one of them and they are then left to sort out their respective contributions between themselves
- 5.2 When Council Tax is not being paid, the Council will take action for recovery of the debt against any or all of the liable parties

6. Instalments

- 6.1 Council Tax is usually paid by 10 monthly instalments from April to January but you can also choose to pay 12 instalments in a full year. If your request is received by March, you will receive a revised bill outlining the 12 instalments from April to March of the following year. If your request is received in any month after March, you will only be given instalments for the remaining months until March of the following year. For example if your request is received in June you will be given nine instalments from July to March. When new bills are issued in April, your payments will automatically be divided into 12 instalments.

7. Methods of Payment

- 7.1 Direct Debit. This is our preferred method of payment. We offer payment dates of the 3rd, 15th or 25th of the month.
- 7.2 Standing Order. The taxpayer sets this up at their bank by quoting the agreed instalments and Newcastle under Lyme Borough Councils bank details
- 7.3 Debit card by telephoning our automated telephone service on 08452340069
- 7.4 Credit card by telephoning our automated telephone service on 08452340069. This carries a 2% fee for all transactions.
- 7.5 Online at www.newcastle-staffs.gov.uk

:

- 7.6** By Post: Addressed to The Executive Director Resources and Support, Civic Offices, Merrial Street, Newcastle, Staffs ST5 2AQ. Cheques and Postal Orders should be crossed and made payable to: - Newcastle-under-Lyme Borough Council and the Council Tax account number written on the reverse.
- 7.7** By Pay Point Payment Card:
Payment may be made at Post Offices and other shops offering the Pay Point service. To obtain a Pay Point payment card, the customer should contact the Council. There may be an initial delay in issuing a new or replacement card and any instalments due during this time should be made using an alternative payment method

8. Reminders / Final Notices

- 8.1** We follow a strict recovery programme, and reminders are timetabled monthly. We can amend this timetable, adding to or removing dates as required. This enables us to manage workloads, resources and collection requirements more effectively.
- 8.2** If a customer does not pay an instalment by the due date we will issue a reminder. The reminder will request payment of the overdue instalment within 7 days
- 8.3** If the missed instalment is received within 7 days we will not take any further action; but if it remains unpaid we may cancel the instalments and issue a summons for the full year's tax.
- 8.4** If the instalment is received within 7 days, but another instalment is not paid then we will issue a second reminder. If the missed instalment is received within 7 days we will not take any further action; but if it remains unpaid we may cancel the instalments and issue a summons for the full year's tax.
- 8.5** If the account is brought up to date but falls behind a third time, we may send a Final Notice, at this point the full outstanding amount will become payable as the right to pay by instalments has been lost.
- 8.6** Failure to pay the Final Notice will result in a summons, which will incur costs.
- 8.7** The individual circumstances of the customer will be considered to see if there any special or mitigating factors to be taken in account.

9. Summons and Application for a Liability Order

- 9.1** A summons will be sent to each person named on the bill and summons costs will be incurred.
- 9.2** If the customer pays the amount of the summons (i.e. the full amount outstanding for the year) plus costs prior to the Court Hearing, the Hearing will not proceed and we will not obtain a Liability Order.
- 9.3** If the customer does not pay the Summons amount plus costs prior to the Hearing, the Hearing will proceed and we will ask the Magistrates to grant a Liability Order plus additional costs.
- 9.4** At any time after the Summons has been issued we may agree to a repayment arrangement, (see section 11). If the payment arrangement is accepted and payments are received as agreed, no further recovery

action will be taken. If a payment arrangement is not accepted, the Council will write to the customer with the reasons why.

- 9.5** Failure to pay in full or contact the Council to make an arrangement will result in further recovery action being taken.
- 9.6** At the Hearing we must show the Magistrates proof that we have set and attempted to collect the Council Tax in accordance with the law. We must also confirm that the customer named on the Summons is liable and that all or part of the debt remains unpaid. If the Magistrates accept our evidence they will grant the Liability Order.
- 9.7** To defend an application for a Liability Order, the customer must offer a valid defence against it. Valid defences are:
- We have not demanded council tax in accordance with the regulation.
 - The amount has been paid in full with costs.
 - The person named on the Summons is not the liable person.
 - We have already commenced bankruptcy or winding up proceedings.
- 9.8** It is not a valid defence if the customer:
- Is unable to pay.
 - Has recently applied for council tax benefit.
 - Has applied to the Valuation Office Agency against their Banding.
 - Has appealed their liability to the Valuation Tribunal.
- 9.9** Where customers are liable on a joint and several basis, recovery and enforcement procedure may be applied to one or more of the joint taxpayers.
- 9.10** The individual circumstances of the customer will be considered to see if there are any special factors to be considered when determining what enforcement action is taken.

10. Liability Order

- 10.1** A liability order is an order of the Magistrate's Court that gives certain powers to the Council to collect the debt that it is owed. The order is for a fixed amount of money, plus additional costs
- 10.2** The liability order gives the Council the power to recover the debt using any of the following methods set out below. The authority will decide which method is most appropriate to follow depending on the information available on the customer at the time

11. Payment Arrangements

- 11.1** Taxpayers and ratepayers who are experiencing personal and financial difficulties and struggling to pay their Council Tax and Business Rates will be encouraged to undertake an income and expenditure analysis with the Council to ascertain the best method and rate of recovery.
- 11.2** Taxpayers and ratepayers will also be advised of other organisations that can help with debt advice.
- 11.3** An individual's financial and personal circumstances will be assessed before any arrangement is made.
- 11.4** When agreeing an arrangement to pay with a taxpayer or ratepayer, Recovery Officers will refer to the Council's Guidance on Vulnerability

(Attached Appendix - Vulnerability Criteria).

- 11.5 The Council will make arrangements with the taxpayer, ratepayer or bona fide representative, including, but not limited to, husband/wife, partner, debt advisor, executor or solicitor. Arrangements will only be made with representatives, where there is written or express authority for the representative to act on behalf of the taxpayer or ratepayer whose name appears on the bill.
- 11.6 When making arrangements to pay the Council will seek to clear debts within the financial year of the liability. Where this is not possible, the Council will seek to reach an agreement that allows, as a minimum, the payment of the continuing liability plus an affordable amount off any arrears. Arrangements will be assessed based upon the affordability and sustainability for payment and seek to ensure that the debt is paid off within a reasonable period.
- 11.7 At the discretion of the Recovery Section a solicitors undertaking that Council Tax arrears will be paid from the proceeds of a sale will be accepted as an alternative to setting up a payment arrangement
- 11.8 Where a taxpayer or ratepayer makes an arrangement to pay but fails to keep to that arrangement, the Council will assess the circumstances of the taxpayer (if known) before taking further recovery action.
- 11.9 Whether the arrangement is made by telephone or by personal contact, the Council will confirm the arrangement in writing, clearly detailing the arrangement and the consequences of not meeting the payments.

12. Attachment of Earnings

- 12.1 Where the Council is aware of a Council Taxpayer's employment details they will, in most cases, issue an order to the taxpayer's employers to make deductions from their earnings. Employers are legally required to comply with the order and may deduct a nominal charge which is defined in law for each deduction made towards the costs of administering the order.
- 12.2 The amount being received under the order will be reviewed on a regular basis and where it is felt that this is insufficient to clear the debt outstanding within a reasonable time, the Council may either request a further attachment to earnings order to be made (maximum of 2) or cancel the attachment and take alternative action to recover the amount due.
- 12.3 In cases where a taxpayer will suffer hardship because of an attachment order, the circumstances of individual cases will be considered with a view to taking alternative action. This will usually be an arrangement to pay a lower amount than that prescribed under an attachment order which is acceptable to the Council.
- 12.4 An attachment to earnings will only be cancelled in exceptional circumstances where suitable alternative action can be agreed.

13. Attachment of Members Allowances

- 13.1 This process is available in respect of an elected member of any billing authority or any major precepting authority (with the exception of the City of London and the Metropolitan Police) against whom a liability order has been granted.

- 13.2** It is not limited to members of the billing authority or major precepting authorities whose Council Tax is under collection.
- 13.3** An Attachment Order is directed to the Local Authority of which the debtor is a member and operates as an instruction to the authority to make a deduction from attachable allowances payable to the debtor.

14. Attachment of DWP Benefits

- 14.1** Universal Credit, Job Seekers Allowance, Pension Credit, Income Support and Employment Support Allowance can all be attached to pay Council Tax arrears.
- 14.2** If the customer is receiving one of these Benefits, the Council will ask The Department of Works and Pensions to make regular deductions from the benefit and make payments to the Council.
- 14.3** When deciding this option, the council will take into consideration the level of arrears and the length of time it will take to recover the debt.

15. Enforcement Agent

- 15.1** Following the granting of a Liability Order, where a taxpayer or ratepayer fails to make contact with the Council or fails to make or maintain a payment arrangement (including orders under attachments to earnings or deductions from benefit) the Council may issue instructions for a Enforcement Agent to collect the debt.
- 15.2** For Council Tax debts there will be an initial 14 day period - called pre-compliance, where the Enforcement Agent will attempt to engage with the customer via written communication. No fees are incurred at this stage and providing an acceptable arrangement is made with the enforcement agent then no fees are added. If no contact is made with the Enforcement Agent then the debt will move to the compliance stage of the process and fees are incurred. Business Rates debts move straight to the compliance stage of the process and fees are incurred immediately.
- 15.3** At the compliance stage the Enforcement Agent will again attempt to engage with the tax or rate payer via written communication before visiting the customer's home with the aim of taking control of goods and gaining full payment. With the exception of the pre-compliance stage noted above, there are associated fees with each stage of action that the Enforcement Agent takes.
- 15.3** Fees associated are charged in accordance with levels set out in the legislation.
- 15.4** The Enforcement Agent may make an acceptable arrangement with the debtor to repay the sums due or take control of goods owned by the debtor to satisfy the amount outstanding.
- 15.5** Actual removal and sale of goods will only take place in exceptional circumstances following approval from a Senior Recovery Officer. All efforts will be taken in order to make an arrangement to pay.

16. Further recovery options available to the Council

Where the forms of action detailed in Sections 10 to 15 have either been unsuccessful, are not considered to be appropriate, or the taxpayer or ratepayer has failed to make contact with the Council, the Council may pursue other recovery options that may have more serious implications for the taxpayer and ratepayer.

These actions are:

- Committal Proceedings
- Charging Orders
- Bankruptcy
- Winding Up Procedures

17. Committal Proceedings

The Council can apply to the Magistrates Court to have the customer committed to prison for a maximum of 90 days. The council is likely to take committal action against the customer when;

- An Enforcement Agent has returned a debt back to the Council endorsed "Nulla Bona"
- Has no property or assets
- Has previously broken agreed payment arrangements / have failed to enter into a payment arrangement
- Has failed to provide employment details

17.1 Committal proceedings can only be taken against a taxpayer or ratepayer where the Enforcement Agent has certified there is insufficient goods and may only be taken against individuals and not Limited Companies.

17.2 Where committal action is considered to be appropriate, the Council will write to the tax or ratepayer(s) inviting them to attend an informal interview with Council Officers to discuss their financial and personal circumstances to resolve the matter to the satisfaction of the Council without the need to commence proceedings. This will be at a pre-arranged date and time.

17.3 Only when the taxpayer or ratepayer fails to respond or the Council is unable to agree arrangements to discharge the debt, will the Council commence committal proceedings.

18 Charging Orders

18.1 The council can apply to the County Court for a charge to be put on a property on which a Council Tax debt is owed if it has liability orders for a debt more than £1,000.00, providing the property is owned by the debtor.

18.2 The council can apply to the Court to force an order for sale of the property to pay the Council Tax arrears including all costs incurred.

18.3 The Council is likely to apply for a Charging Order against a property that is fully or jointly owned by the customer if;

- The customer has a vulnerable person in their household e.g. disability or the customer/partner is over 70 years of age

- A third party has power of attorney
- No contact can be made with the debtor
- They do not appear to have sufficient income or assets to pay the arrears
- The property is currently for sale and no payment arrangement has been agreed

19 Bankruptcy

- 19.1** This option is only available where the taxpayer or ratepayer is an individual. This course of action is not only administratively costly for all parties but can also have considerable impact both on the taxpayer and members of the taxpayers' household. Consequently, this will only be considered where:
- They have sufficient realisable assets e.g. equity in a property to pay the debt and all costs incurred
 - Have previously broken agreed payment arrangements / have failed to enter into a payment arrangement
 - Are not considered to be vulnerable
 - All other enforcement remedies have been exhausted
- 19.2** No bankruptcy proceedings will take place without attempting to contact the taxpayer or representative.
- 19.3** A statutory demand will be served on the taxpayer setting out the debt outstanding, and the options available to them to prevent further action, the time scales in which they need to respond (21 days). A guide to the potential bankruptcy costs is included with the statutory demand. No additional costs are incurred at this stage, and the Council may agree a payment arrangement with the taxpayer.
- 19.4** Where, after 21 days, the tax/ratepayer has not responded to the statutory demand or the Council is unable to agree arrangements that will discharge the debt; the Council will consider whether a petition for the taxpayer to be made bankrupt should be issued.
- 19.5** Before a petition is issued, the Council will make all reasonable attempts to find out what the tax/ratepayer's personal and financial circumstances are and to determine whether they or other members of the household may fall within the Council's Vulnerability Criteria as described in Appendix 1. A petition for Bankruptcy will only be authorised by the Head of Revenues.
- 19.6** Where, from information provided by the tax/ratepayer or their representative, or other sources there is evidence to suggest that the taxpayer or other members of the household fall within the Council's Vulnerability Criteria the case will be reviewed by a Senior Recovery Officer to confirm that bankruptcy is appropriate.
- 19.7** Where the Council considers that bankruptcy action should continue, a petition will be served on the tax/ratepayer, advising them of the date and time of the bankruptcy hearing. The serving of a bankruptcy petition will result in significant costs being incurred.
- 19.8** It is essential that the taxpayer or ratepayer attends this or any adjourned hearing to make representation to the judge as to why the order should not be made. Where the taxpayer or ratepayer fails to attend, the Court will determine whether the issue of a bankruptcy petition should be

made. Once the order has been made the matter will be referred to the Official Receiver for Trustees to be appointed

20. Winding Up Procedures

- 20.1** Where the ratepayer is a limited company the same criteria as for determining whether bankruptcy action is appropriate will be undertaken.
- 20.2** In appropriate cases, a formal request for payment will be sent to the ratepayer advising them of the impending action and the consequences of this action being successful.
- 20.3** No additional costs are incurred at this stage, and the Council may agree a payment arrangement with the ratepayer.
- 20.4** Where, after 14 days, the ratepayer has not responded to the formal request or the Council is unable to agree arrangements that will discharge the debt; the Council will consider whether a petition for the winding up of the company should be issued.
- 20.5** Where a petition is served on the ratepayer this will notify them of a date and time of the hearing in the High Court. The serving of a petition will result in significant costs being incurred.
- 20.6** It is essential that the ratepayer attends this hearing or any adjourned hearing to make representation to the judge as to why the winding up order should not be made.
- 20.7** Where the ratepayer fails to attend this will generally result in the company being wound up.
- 20.8** Once the company has been wound up the matter will be referred to the Official Receiver for a Liquidator to be appointed

Appendix

Vulnerability Criteria

A failure to maximise collection of Council Tax and Business Rates will potentially put Council services at risk and increase the likelihood that Council Taxpayers and Ratepayers who do pay on time will have to subsidise non payers through future increases in the level of Council Tax.

The Council recognises that some taxpayers and ratepayers will, due to their individual personal and financial circumstances have extreme difficulty in paying their Council Tax and Business Rates, and recovery action, particularly where an option under Sections 17, 18 19 & 20 of these procedures is being considered, may not be appropriate where these suggest the taxpayer, ratepayer or other household members may be vulnerable in some way.

The Council will ensure processes are in place to ensure that due regard is given to this group of taxpayers' and ratepayers.

A person may be considered vulnerable in the following circumstances. The list is not exhaustive and each case will be decided on its own merits:

- The person is elderly
- The person is seriously ill or mentally or physically disabled
- The person has communication or learning difficulties
- The person has young children and where there is severe deprivation
- The person has recently experienced a recent marital break up
- The person has recently been bereaved or made unemployed

Falling into one of these categories does not automatically mean that recovery action is not appropriate. The Council will make individual decisions based upon the individual circumstances of the taxpayer or ratepayer to identify if recovery action is appropriate and, if so, what action to take.

Different recovery proceedings cannot be applied simultaneously to one customer, but can be applied subsequently if a debt remains outstanding. The choice of recovery action is made at the discretion of the Council's Recovery Officers and will take into account the taxpayers and ratepayers circumstances on a case by case basis and the guidance within this Policy.

The Revenues Service may become aware of vulnerable ratepayers and taxpayers following contact from the taxpayer, ratepayer or their representative or once recovery action is instigated. Alternatively, this information may become available from other internal systems used by the Council, from other service lines or from other support agencies.

Where the Enforcement Agent on visiting the taxpayer or ratepayer identifies vulnerability they have procedures in place to take the appropriate action.