

Business Support Overview and Scrutiny Committee

BRIEFING NOTE – No. 15/2014

- Date:** 2 October 2014
- Briefing paper to:** All Members of the Business Support Overview & Scrutiny Committee
- Purpose:** This briefing note was as a result of discussion at the meeting of this Committee on 26 August 2014

Empty Homes

Executive Summary

- At Business Support Overview and Scrutiny Committee on 26 August 2014, members requested a briefing note on the recovery of council tax, particularly where properties have been left vacant.
- This note sets out the options open to the Council to recover arrears of council tax, and the advantages and disadvantages of each. These can be used irrespective of whether properties are vacant, and the period for which they have been left vacant.
- The options include the power to apply for a charging order over debtors' properties and an order for sale.

Collection of council tax and recovery of council tax arrears

The process and powers for collecting council tax are contained within The Local Government and Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992. In summary:

- the council tax payer is sent a demand at the beginning of the financial year and has the right to pay this by monthly instalments.
- If the instalments are not paid, the council pursues recovery by serving at least one reminder for the instalment(s) due.
- If the instalments are still not paid the Council sends a final notice whereby the right to pay by instalments is lost and the full council tax for the year falls due.
- If the full amount is not paid, nor a suitable arrangement for payment made, the Council applies to the magistrates' court for a liability order.
- If the magistrates make a liability order and the debt is not paid, councils can:

- make an attachment of earnings order, or
 - apply for deductions from the debtor's state benefits, including income support, job seeker's allowance or pension credit, or
 - taking control of the debtor's goods to sell and clear the debt with the proceeds, or
 - apply to the county court (or the High Court in London) for a charge to be put on a property on which a council tax debt of more than £1,000 is owed, if it is owned by the debtor, or
 - apply to the county court (or High Court in London) for the debtor to be made bankrupt if it has a liability order for a debt of more than £750.
- If the Council has tried and failed to take control of the debtor's goods and sell them to clear the debt, the Council can apply to the magistrates' court to have the debtor committed to prison.

Limitations and implications of recovery methods

Attachment of earnings

This method can only be used if the debtor is employed (not self-employed). The collection of arrears can be difficult to maintain if debtors change employers or move in and out of employment. This is effective only where the debtor and his whereabouts are known, and they are engaging with the Council to the extent that they have given employment details (although debtors have a legal duty to supply relevant information to the Council after a liability order has been made, including details of their employer, within 14 days of the Council requesting the information)..

Deductions from benefit

This method requires the consent of DWP. Guidance issued by DWP states that consent will only be given where the deduction is in the interests of the benefit recipient and their family (e.g. to avoid imprisonment for non-payment), and not for the convenience of the creditor. Recovery can be very slow as only small amounts are usually agreed. . It is unlikely that the owner of an empty home will be on benefits as the capital value of it should form part of any means testing.

Taking control of goods and selling them (previously known as levying distress)

This method depends on the Council knowing the owner's whereabouts and the Council's enforcement agents finding sufficient goods to seize.

Committal proceedings

If taking control of goods has failed the Council may apply to the magistrates' court for the debtor to be committed to prison. The magistrates will inquire into the debtor's means And a warrant for the debtor's committal can only be issued if the magistrates are satisfied that failure to pay the council tax is due to the debtor's 'wilful refusal or culpable

neglect'. The Court's usual practice is to make a suspended warrant, which will not take effect as long as the debtor keeps up the payments that the Court has ordered.

In order for committal proceedings to take place the Council must know the debtor's whereabouts to serve warrants to bring them before the Court.

Bankruptcy

The council can start bankruptcy proceedings if it has a liability order for a council tax debt of more than £750. The first step is to serve a statutory demand, explaining the debt that is being recovered. A debtor can ask the County Court to set the demand aside on specified, limited grounds (for example that the debt is not owed). If the debt remains unpaid after 21 days and no arrangements to clear it have been agreed, a bankruptcy petition can be presented to the Court asking for the debtor to be declared bankrupt. The debtor will be liable to pay the Council's costs. Once the Court makes a bankruptcy order, the Official Receiver can appoint a licensed insolvency practitioner as a trustee in bankruptcy (TIB) to safeguard and secure the assets of the debtor for the benefit of creditors generally, or appoint himself as TIB. A debtor's assets can be sold to settle the debt. TIBs are entitled to payment out of the proceeds for their costs in dealing with the bankrupt's property.

This method of recovery again requires knowledge of the debtor's whereabouts and is also potentially expensive for the Council and debtor. The Council has to pay a deposit of £750 when presenting the bankruptcy petition at court, to provide security for the TIBs expenses. In addition, secured and preferential creditors, such as banks with a mortgage over the debtor's property, take priority over the Council, even if the Council has petitioned for the bankruptcy. If the debtor does not have enough assets to pay off all creditors in full, the Council will not be paid the full amount owing, and in the worst case scenario might not receive anything.

Placing a charge on the property

An application to put a charge on a property can only be made if a council tax debt of over £1,000 has been incurred on that property. This secures the debt but it is not paid until the property is sold (but meanwhile attracts interest). When the property is sold any mortgage debts take priority and the sale may not raise enough to clear the council tax debt. Before making a charging order, the Court will consider the personal circumstances of the debtor and whether any other person would be likely to be unduly prejudiced by the making of the order

However, where there is sufficient equity in the debtor's property, the Council has found this the method to be the most effective in dealing with debts on long term empty properties. Placing the charge itself can be successful, but where it is not the Council can apply to the Court for an order for sale. This may also result in payment being made, but ultimately the Council can, and has on three occasions, taken possession of the property and sold it with the council tax (and other debts owed to the Council) being deducted from the proceeds of the sale.

A charge and all pursuant actions can be taken provided documents have been served at the address or such alternative address shown on the Land Registry. This means contact does not have to be made with the debtor.

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