



Debt Management & Collection Policy

Use of Severe Remedies

1. Introduction

This appendix to the Debt Management & Collection Policy sets out the Council's Policy for the use of the following remedies to recover unpaid debts;

- An application to have the debtor declared bankrupt or for other forms of insolvency.
- An application to register a charge against a property or apply for the sale of a property against which a charge is registered.
- An application to have the debtor committed to prison.

For ease of reference these actions are collectively referred to as 'severe remedies' throughout this policy.

2. Commencement of Proceedings

No proceedings in respect of a severe remedy shall be commenced without written authorisation from the Assistant Director – Finance following a recommendation from a panel of at least two officers.

At least one member of the panel shall be employed at Head of Service level or above and at least one member shall hold a relevant professional qualification (e.g. Institute of Revenues Rating and Valuation or Chartered Institute of Public Finance and Accountancy). Advisory members may be appointed to the panel in respect of specific cases where considered appropriate.

Commencement of proceedings is defined as;

Insolvency	Issue of a Statutory Demand
Charging Order	Application for an Interim Charging Order
Means Enquiry	Application for a Means Enquiry Summons

3. Requests for Authorisation

Requests for authorisation shall be submitted to the panel in writing and shall incorporate;

- An accurate history of the origin of the debt and of the attempts made to recover it.
- Details of any other debts owed to the Council by the same debtor.
- Information about any past, present, disputed or outstanding benefit claims or any discounts or exemptions that might be relevant.
- Information about any other disputes in respect of the debt.
- An assessment of the debtor's assets and of whether they are sufficient to clear the debt if a severe remedy is pursued.
- An assessment of the prospects of recovering the debt by other means in a reasonable timescale.
- Sufficient evidence about the debtor's circumstances to support the decision making process.
- Consideration of whether a debtor's failure to pay and to respond to other recovery measures could arise from a disability (including a mental impairment) with a long-term and substantial effect on normal day-to-day activities.
- Consideration of whether the debtor's personal circumstances warrant them being protected from the consequences of recovery action.
- Confirmation that enquiries have been made of the Council's Adult and Children's Directorate to establish if they are aware of any reason that the individual may have difficulty in managing their financial affairs, or of any potential adverse impact on the wellbeing of the individual or a person in their care that may arise from the use of the severe remedies, together with details of any information provided by those services.
- Details of visits made in an attempt to contact the debtor and of the outcome of the visits.
- Confirmation that information has been provided to the debtor regarding sources of help and advice on dealing with debt.
- An assessment of the likely costs that will be incurred by the debtor and the Council if use of the remedy is approved (based on a straight forward case).

4. Action to be Taken Prior to Making a Request

Before making a request to utilise a severe remedy the following actions must be carried out;

- All statutory processes required to be undertaken before the severe remedy can be used must be conducted.
- The debtor must be provided with clear information in simple language about the availability of sources of free information and advice on dealing with debts, with the first visit letter (for example the Citizens Advice Bureaux services, National Debtline etc).

- The debtor must be provided with clear information in simple language about the severe remedies that may be used if they do not take action to resolve the debt. This should include information about the consequence of the severe remedies including the potential cost.
- Enquiries should be made of the Council's Adult and Community Services Directorate and Children's Services, Schools and Families Directorate to establish whether those Directorate's hold any information about the individual that is relevant to the decision, such as their ability to repay the debt, to manage their financial affairs or of the potential for the use of a severe remedy to be detrimental to the individual's wellbeing.

4.1 Visits by a Council Officer

- A minimum of three visits should be made by a Council Officer in order to try to establish contact with the debtor. At least one of these visits should be made in the evening or at the weekend if no contact is made on the first two occasions. Where no contact is made a letter should be left inviting the debtor to contact the Council to make an appointment to discuss the debt at either the Council's offices or at the debtor's home.
- Where the debtor's address is beyond a reasonable travelling distance from the Borough's boundary the case should be referred to the severe remedies panel to consider the appropriate and proportionate action to be taken to seek to establish contact with the debtor.
- If no contact is made the visiting officer shall make discrete enquiries with neighbours in order to attempt to identify a way to contact the debtor. However, under no circumstances should details of the reason for the visit be disclosed.
- Where the debtor is a limited company visits are not necessary other than those in connection with the levying of distress. However, prior to the commencement of a severe remedy a letter should be sent to the registered office of the company advising the organisation in simple language of the intention to commence action and the consequences for the organisation of those actions. If the debtor is an unincorporated organisation visits should first be made to the organisation's address. Where this is unsuccessful a visit may be made to the home address of the appropriate officer of the organisation.

The following information, as a minimum, should be recorded for each visit;

- The date and time of the visit.
- A description of the premises and of any other assets which it appears may belong to the debtor.
- Where contact is made the following questions should be asked and the answers recorded;
 - The name of the person spoken to.
 - Their date of birth (to avoid any confusion about the person's identity).
 - Their confirmation that they owe the debt Is the debt disputed in any way and if so on what grounds.
 - Their proposal for repayment.
 - Details of their income and expenditure, including the name and address of their employer if they are in employment.
 - Whether they have any assets that could be used to pay the debt.

- Whether they are aware of where to go to seek free advice about their debts.
- Whether they have any disabilities or medical conditions that affect their ability to repay the debt or to understand the situation
- Any other information that they consider to be relevant to the debt and its repayment
Whether the person has any difficulty understanding written communication in English
Details of other persons resident in the household including their ages and relationship to the debtor.
- Whether there are any concerns regarding the debtor's mental capacity.

5. Mental Capacity

In considering the use of a severe remedy due regard must be given to the debtor's mental capacity. In accordance with the Mental Capacity Act 2005 Code of Practice it should be assumed that the debtor has mental capacity unless there are grounds for concern. Where there are grounds for concern the five principles set out in the Code of Practice should be applied.

- A person must be assumed to have capacity unless it is established that they lack capacity.
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Where cause for concern is identified advice should be sought from the Council's Mental Capacity Act expert and this advice should be taken into consideration in considering further action under this Policy.

In the event that concerns are identified that require further action under the Council's Safeguarding Policy, for example suspicions that a debt has arisen through financial abuse of the debtor, then action to enforce payment should be suspended until the completion of an investigation in accordance with the Safeguarding Policy.

6. Approving the Use of Severe Remedies

The Severe Remedies Authorisation Panel shall consider in each instance whether use of the proposed remedy is a fair and proportionate action giving consideration to the individual circumstances of the case.

The interests of local residents, businesses and taxpayers shall be taken into consideration by the panel in reaching its decision.

The panel shall only approve use of the remedy where it is satisfied that the action is fair and proportionate given the particular circumstances of the case.

The panel's decision will be recorded in writing together with the reasons for reaching the decision.

7. Sharing of Information within the Council

Requests for information from other Council Directorates shall be made using an approved form.

In sharing personal data for the purposes of this Policy due regard must be given to the requirements of the Data Protection Act and the guidance provided with the approved form. Officers providing information shall do so using the approved form and should be satisfied that information they provide is relevant to consideration of the use of the severe debt enforcement remedy.