

Cotswold District Council Recovery Policy Extract

Appendix I:

Council Tax and Non Domestic Rates

Council Tax is payable by the vast majority of adults who are resident in the district. Each property is placed into one of eight Council Tax bands (A-H) based upon the market value of the dwelling in 1991. The Council administers the scheme and collects the tax.

There is a vast amount of work involved in establishing and assessing liability to Council Tax as there are many different ways in which the charge can be reduced.

Non Domestic Rates (NDR) are payable by businesses. The Council collect the rates on behalf of Government. The amount a business pays is dependent upon the rateable value of the property which is determined by the Valuation Office Agency (VOA). A re-valuation normally happens every 5 years.

Once liability has been assessed and the level of charge established and the Council Tax payer or Rate payers fails to pay in accordance with the demand notice or bills, there are various options available to enforce payments.

At the beginning of each financial year, every Council Tax and NDR payer has a right to pay their annual bill in 10 monthly instalments, these monthly instalments run from April to January. They can also elect to pay in 12 monthly instalments (April to March) or in one lump sum (April).

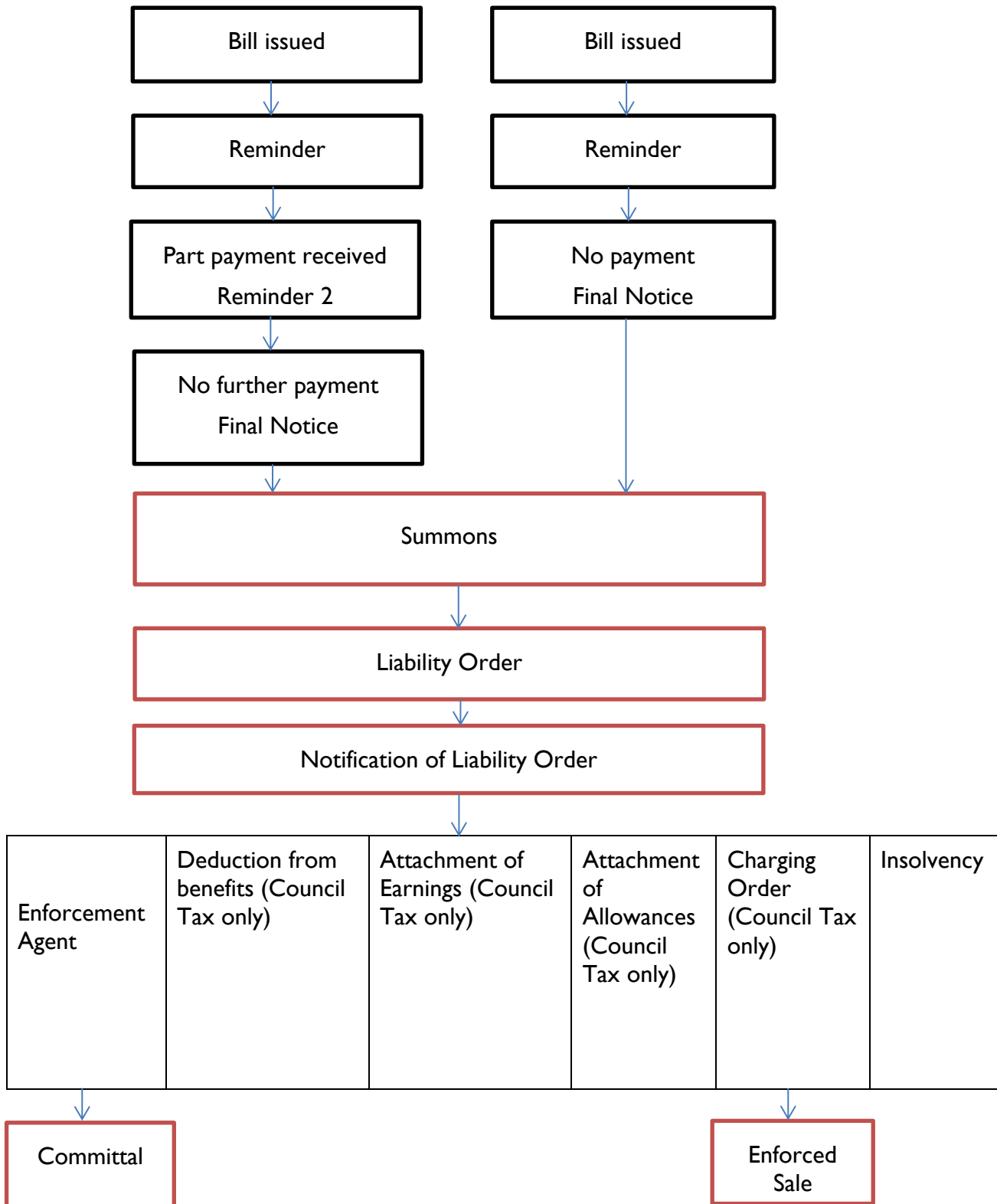
Payments are currently accepted by:

- Direct Debit
- Standing Order or Bank Giro
- Via Bank or Post office Counter
- BACS and Bank Transfer
- Cheque or Postal Order
- Cash
- Debit and/or Credit Cards
- Deductions from wages, pensions and Councillor allowances
- Deductions from some welfare benefits (Council Tax only)

The Council offers its customers the 3rd of the month for Direct Debit payers.

The Council appreciates that Direct Debit is the most cost-effective way to collection Council Tax and Business Rates and every opportunity is taken to promote this method of payment. Each account converted from paying by a non-automated form of collection will realise savings for the Council, as there should not be a need to take recovery action.

Recovery Process



Reminder

A reminder may be issued as early as the day following the date upon which the missed payment was due. To comply with the law, reminder notices must provide a further 7 days in which to make payment to bring the instalment in arrears up to date, or 14 days to clear the full account balance.

The Council recognises that issuing notices the day after payment becomes due could have a negative effect on the customer's perception of the Council, as it would target people who pay, but may be slightly late. These notices will therefore be issued at least 9 days after an account falls into arrears. This timescale provides for those who may pay late without delaying recovery action against those not paying anything.

If a Council Tax payer brings their payments up to date on receipt of a Reminder Notice but then again full into arrears, they will receive a further notice (Reminder 2); however, if they fail to pay following a reminder notice, a Final Notice will be issued.

NDR payers have two opportunities to bring their accounts up to date with the issue of a Reminder Notice on the first default and a Final Notice on the second default.

Final Notices

Final Notices are issued at least 9 days after the last notice where arrears still exist. The Final Notice cancels the tax payer's right to pay by instalments and requests payment of the total balance within 7 days.

If the payer ignores the Notice, but continues to pay their monthly instalments, they will not avoid the issue of a Summons, as the Legislation states they have lost their right to pay by instalments.

Pre-Summons Payment Arrangement

If the customer contacts the Council upon receipt of a Final Notice and indicates they are unable to pay in accordance with the notice, the Council will enter into a payment arrangement with them based on the following conditions:

- The balance owing is less than costs associated with the obtaining of a summons
- The customer is aware that entering into a payment arrangement will not avoid a summons being issued
- The customer is aware of the additional costs associated with a summons

It is a statutory requirement that all payment arrangements are confirmed in writing. In practise this can either take the form of a letter, or the issue of a revised bill. At each stage of the process and through communication with the customer, payment by Direct Debit will be promoted and encouraged.

Summons

If the customer fails to adhere to the Final Notice, the Council will summons them to the Magistrates Court and make an application for a Liability Order. Without this Order, the Council cannot take further enforcement action to collect the debt and protect the Council's interests.

However, it is recognised that to make effective use of this recovery tool, a Summons will not be issued where:

- The balance is equal to or under the value of the summons cost;
- There is a Council Tax Support application registered on the Northgate system;
- There is uncertainty over a current address;
- The customer has died;
- An appeal to the Valuation Tribunal is outstanding

Summonses will be issued at least 18 days after the Final Notice, where there remains a balance outstanding. Costs for the issue of the Summons are added to the account.

The Council will withdraw the Summons on the following grounds:

- Full payment has crossed with the issue of the Summons
- The Council is in error
- There is evidence of long term sickness, serious illness, frailty or vulnerability
- There has been a recent death of a close relative
- Mail has been returned as 'gone way'

Liability Orders

Application will be made to the Magistrates Court for the issue of a Liability Order at least 14 days after the issue of the summons where:

- There is a summonsed balance outstanding
- The case has not been adjourned to a later date
- The Summons has not been withdrawn

Application to the Magistrates Court for the issue of a Liability Order will not be made where:

- The customer has died
- The Summons has been withdrawn
- It has been agreed that the matter will be adjourned
- Correspondence is held which could result in a reduction of liability
- A relevant High Court case is outstanding
- Mail has returned as 'gone away'

Where only the Summons cost remains outstanding the Council may not consider it to be appropriate or cost effective to pursue collection. However, where payment of a summons is received without costs a letter will be used to the customer advising them that the costs remain unpaid and that the Council will continue with the application for a Liability Order if payment of the costs is not received. A decision to pursue collection will be decided on an individual basis, having regard to the circumstances and history of the account.

A Liability Order gives the Council various powers to enforce payment. It is the Council's intention to make effective use of these powers having regard to maximising collection, but giving consideration to the customer's financial circumstances.

A Liability Order notification letter will be issued by the Council within 7 working days of the Liability Order being granted where no alternative method of collection has been implemented. It will include a notice of the statutory enforcement fees. For Council Tax debts a financial questionnaire will be used for completion and return.

The financial questionnaire is used to obtain information as to the customer's financial situation and to prioritise the appropriate method and level of payment in order to maximise collection without causing severe financial hardship.

Withdrawing Costs

In the majority of cases payment of the total balance including costs will be pursued as the Council recognises this is valuable income to the Council. However, on occasions, it may be appropriate to consider withdrawing costs where:

- Full payment has crossed in the post with the summons
- The debt outstanding is less than the costs due to entitlement to benefit or adjustment to liability
- Pursuing payment of costs causes severe financial hardship
- Payment history shows that payments are usually made on time but personal circumstances have resulted in late payments (ie: illness, disability, bereavement etc)
- The customer has passed away

Where the recovery action has reached the Enforcement stage and/or beyond to committal proceedings, the Council will ensure that the costs are not withdrawn except where the following exceptionable circumstances exist:

- The defaulter absconds and tracing enquiries are unsuccessful
- Information is received, which, had it been received earlier, would have prevented recovery proceedings from being taken
- Liability is cancelled

Post Liability Order Payment Arrangements

Arrangements can be made to discharge the debt at any time throughout the recovery process, and can therefore be agreed in the intervening period between the issues of the Summons and the Court Hearing. However, it is important to emphasise that the customer has a right to a fair trial and the customer should under no circumstances be prevented from attending the Court Hearing. It is their legal right to do so. If an acceptable arrangement is made with the Council before the Court Hearing, the application for the Liability Order will still proceed but no action will be taken to enforce the Liability Order unless there is a default on the payment arrangement. The award of a Liability Order also involves further costs being awarded to the Council, and any arrangements made before or after the hearing will take those costs into account,

These arrangements will be based on the following criteria:

- The customer's ability to pay
- The customer's commitment to paying
- The customer's payment history
- The debt will be paid within the financial year or if unable to discharge within the financial year the arrangement will be reviewed every 6 months

- Whether other arrears of Council Tax and NDR exist and what arrangements are in place for collecting these debts
- Any other Council Tax or NDR arrears are taken into account to ensure the payment arrangement is realistic and maximises the income to the Council

All payment arrangements will ensure:

- Priority is given to the current year debt (where no recovery action has been taken)
- The oldest debt becomes priority after recovery action has been taken or the current year debt has been cleared
- Costs are included within any arrangement
- Direct Debit is offered and encouraged
- The overall total debt is reducing
- An alternative method of collection would not discharge the debt more efficiently (ie Attachment of Earnings Order)

In order to maximise collection, we will continue to enter into Special Arrangements throughout the recovery process and customers will often enter into a number of different agreements before the debt is cleared. This is particularly relevant where a low payment arrangement is agreed due to the short term financial difficulties experience by the customer.

The Council can only enter into a Special Arrangement following communication from the customer, normally in the form of a completed financial questionnaire, or following other proactive recovery initiatives. If the customer does not contact the Council to discuss their arrears, any information held on file will be used to adopt an automated method of collection such as an Attachment of Earnings Order when the place of employment is known or direct deductions from other welfare benefits when it is known that the customer is in receipt of a benefit.

In the absence of a Special Arrangement recovery action will be taken in the following order of priority:

- Attachment of Earnings Order
- Deductions from benefits
- Attachment of Allowances
- Enforcement Action
- Charging Order
- Insolvency
- Committal
- Enforced Sale

If the customer fails to contact the Council, or if there is no information held on file to enable alternative recovery action being adopted, the debt will be passed to the Enforcement Agent for collection.

Attachment of Earnings Order (AOE)

This enforcement tool is available to collect Council Tax debts only and allows the Council to instruct the customer's employer to make deductions directly from their wages based on the level of earned income. Deductions are made in accordance with the Council Tax (Administration and Enforcement) Regulations 1992, as amended.

This can be a contentious method of collection as customers are often reluctant for their employers to be made aware of the debt, and for the Council to be paid direct from their wages. However, this alone is not

a good reason to cancel this method of collection. When determining whether or not to stop the Order the following factors will be taken into account:

- The permanence or otherwise of the customer's employment: The customer may be in temporary employment and the income from the Order is minimal. The employer may threaten to cease the customer's employment due to the Order and there may be a real risk of the customer losing their job
- Previous Attachment Orders: If a previous AOE for the same debt has previously been cancelled in favour of a voluntary payment arrangement which has subsequently failed, there is insufficient reason to again cancel the current AEO
- Financial situation: if the customer's income and expenditure is such that they will experience extreme hardship if the AEO would continue. For example, if they have a young family or other extenuating circumstances, it may be appropriate to cancel the AEO in place of a realistic payment arrangement.

Before deciding to stop an AEO the Council will request from the customer a full and detailed statement as to their income and expenditure to enable an informed and balanced decision to be made.

Attachment of Allowances

An Attachment of Allowance provides for deduction of forty percent to be made from the allowances paid to an elected member to clear a Liability Order under the Council Tax (Administration and Enforcement) Regulations 1992, as amended. This enforcement tool is available to collect Council Tax debts only.

The regulations allow for deductions to be made from allowances due to any elected member of either the bill or precepting Authority. Having been served with such an order the Council is required to make deductions and must make a notification within 14 days should the member cease to be an elected member of their Authority

Deductions from Benefits

This enforcement tool is available to collect Council Tax debts only and allows for the Council, where customers are in receipt of one of the following benefits to request that the Department for Work and Pensions (DWP) make deductions:

- Job Seekers Allowance
- Income Support
- Employment Support Allowance
- Pension Credit
- Universal Credit

The rate of deduction is stipulated by the DWP.

The Council makes full use of this enforcement tool as we are guaranteed to receive regular payment, all be it, at a relatively low rate. No other form of enforcement action can be taken against individuals named on the Liability Order whilst deductions are made.

Enforcement Action

This option allows County Court Certificated Enforcement Agents (previously known as Bailiffs) to remove and sell certain goods owned by the customer. (within England and Wales). Fees are chargeable and specified within the Taking Control of Goods Regulations 2013 (TCOG). Accounts in arrears are passed to the Enforcement Agents where a balance remains outstanding and no payment arrangements have been

agreed. Alternatively, accounts are passed to the Enforcement Agents on the failure of Special Arrangements or alternative enforcement methods.

Cases will not be passed to the Enforcement Agents where:

- There is outstanding correspondence which has not been responded to
- There is an outstanding benefit application which is current but not finalised
- There is an outstanding application for exemption, status discount, disabled band reductions, or single person discount which is currently unresolved
- There is uncertainty over the taxpayer's current residence

The primary aim of the Enforcement Agent should be to collect the full payment of the debt. If they are unable to do this because of financial or personal circumstances of the customer, arrangements can be entered into if the payments equate to:

- The total debt being discharged within the current financial year
- If unable to discharge within the financial year a realistic repayment arrangement is agreed

The only exception to the above will be when the customer is in receipt of a benefit and the Council is not able to deduct from the benefit directly. In these circumstances an arrangement equal to the DWP statutory amount of deduction would be considered.

Enforcement Agents

Where the Council employs the services of external Enforcement Agents, all companies acting on behalf of the Council must adhere to regulations set out in Taking Control of Goods (Fees) Act and the Taking Control of Goods Act.

Charging Orders

Where Liability Order have been granted for an aggregate amount of £1,000 or more it is possible to apply to the County Court for a Charging Order to be placed upon the customer's property until the debt is discharged or the property is sold. Consequently, the Council may have to wait a considerable period of time before any payment is actually obtained.

Generally, making an application for a Charging Order will only be considered when other methods of recovery have proved unsuccessful and there is sufficient information available to recommend this course of action. This enforcement action is only application to Council Tax debts.

A Charging Order only acts as a charge on the customer's property. It is the Council's intention to apply and enforce Charging Orders where the debt is large enough to meet legislative criteria (£1,000) and where there is on-going default.

Insolvency

Where a customer owes a debt that is over a prescribed amount (currently £5,000), insolvency action may be instigated. There are two types of insolvency action that may be taken which are personal (Bankruptcy) and company (Liquidation).

Where the customer is made insolvent or subject to a voluntary arrangement any NDR or Council Tax debt due to the Council prior to the date of the insolvency will be included and claimed in full within the insolvency. This effectively stops any alternative recovery action being taken to recover the debt.

If a Final Notice or Summons has been issued the full balance outstanding should be requested on the proxy form as the right to pay by instalments has been lost at this stage and the full balance is legally due.

Where the NDR or Council Tax liability is in joint names and only one of them has been made Bankrupt the Council can still pursue the second named person for the outstanding liability; however, consideration should be given to the likelihood of the Council recovering the debt from that person. If they are unlikely to be able to discharge the debt the debt should be submitted under the Bankruptcy Order.

Such proceedings would only be instigated against customers who:

- Owe in excess of £5,000 and have failed to make any realistic repayment arrangement
- Fall into the category of 'won't pay' rather than 'can't pay'

Before any such action is taken a full information gathering exercise will be undertaken to assess the cost involved for the Council against the likelihood of repayment.

Insolvency proceedings are fairly expensive to undertake with fees having to be paid to the County Court. Whilst these fees form part of the sum due to the Council from the customer, there is no guarantee of being able to recoup either the fees or the debt from the insolvency.

Due to the nature of this course of action, no insolvency proceedings will be instigated with the prior consultation with the relevant portfolio holder and the authorisation and approval of a Service Manager and Legal Executive.

Service Managers:

Group Manager – Jon Dearing

Business Service Manager – Michelle Clifford

Revenue & Compliance Manager – Thomas Clark

Commitment to Prison

Where it has not been possible to collect the debt through any of the remedies detailed in this policy, the customer will be summonsed to court where an enquiry will be made as to their means and conduct with regard to the non-payment.

Making such an application for a customer to be sent to prison for non-payment must continue to be a last resort and therefore, all other alternative recovery action should be considered right up to the Court hearing date.

The Council will carefully consider the appropriateness of each case taking into account the individual personal and financial circumstances of the customer in consultation with the relevant portfolio holder.

The Council is allowed to charge statutory costs to cover the issue, service and execution of Committal Summonses and Arrest Warrants. These costs are recoverable from the customer.

At the hearing the Court is required to conduct a full means enquiry to determine whether the customer's failure to pay is due to either 'culpable neglect' or 'wilful refusal' within the relevant period.

Any case recommended for committal action must be authorised by a Service Manager in partnership with a Legal Executive as the committal process is very labour intensive and therefore a costly recovery tool with varying degrees of success.

Enforced Sale

There are three stages within this process:-

1. Interim Charging Order: an interim charging order can be secured generally without the debtor being present and once secured will be registered at the Land Registry.
2. Final Charging Order: once an interim Order is obtained the Council can then apply for a final Charging Order. The debtor may object to this order, however, the burden of proof is on the judgement debtor to show why such an order should not be made.
3. Order of Sale: in certain circumstances the Council may apply to the Court for an order of sale. The Court has unfettered discretion on whether or not to make an Order of Sale and will take into account a range of factors, such as:
 - The size of debt and length of time it has been outstanding
 - Likelihood of the debt being satisfied by the proceeds of sale
 - Whether the Local Authority is unlikely to recover the debt by using other methods available
 - That the request is reasonable and proportional under Article 8 of the European Convention of Human Rights Act 1998