

Cheshire West & Chester Council

Debt recovery code of practice

1.0 Introduction

- 1.1 This code of practice underpins Cheshire West and Chester Council 's corporate debt policy and sets out the approach adopted by the Council to recover amounts owed to it.
- 1.2 It provides practical guidance, including details of legislative obligations, for collecting and recovering Council Tax, non domestic rates and all other debt (including adult social care contributions) that have not been paid by the due date.
- 1.3 This code of practice does not include penalty charges such as parking contravention notices as the recovery procedure for these is documented in the Council 's parking enforcement guidance.
- 1.4 The Council is committed to using the most appropriate and effective recovery methods available to it. This code of practice will ensure that any use of recovery is consistent and complies with best practice and the relevant legislation for the different types of debt.
- 1.5 This code of practice will be operated in conjunction with locally determined charging policies such as the Council 's fairer charging policy for non residential adults social care and national charging guidance wherever applicable.

2.0 Collection of debt

- 2.1 Any debt recovery system must be efficient and effective and it is widely accepted that early recovery action benefits the person who owes money. It highlights the problem and can prevent further debts mounting up by agreeing a satisfactory repayment plan at an early date.
- 2.2 Customers have a responsibility to pay amounts that have been properly assessed as being due. The Council has a clear priority to ensure that individuals and businesses only pay the amount that they have to and so actively promotes available discounts and exemptions.
- 2.3 If a customer is having difficulty paying the amount due, the Council will encourage them to come to a mutually acceptable repayment agreement to repay it. However, once an agreement has been made, the Council will expect the agreement to be kept. Should the customer default on this agreement the Council will continue with recovery action for the full balance that remains.



3.0 The recovery process

- 3.1 The Council's debt recovery processes will be efficient and effective demonstrating a fair approach to all customers including those that do pay on time.
- 3.2 Reminder notices will be sent to customers who have not paid what they owe by the due date. The Council can claim interest and debt recovery costs in accordance with late payment legislation if another business is late paying for goods and services.
- 3.3 The Council will share information for the purpose of recovering debt in accordance with its information sharing policy and will use external agencies to trace the whereabouts of debtors who have left their last known address.
- 3.4 Attempts to establish dialogue will be made with customers and may involve the use of visiting officers and collection agents to obtain payment of the debt or arrange instalment payments.
- 3.5 If payments are not brought up to date, or an acceptable arrangement made with the Council to bring payments up to date, then any previous right to pay by instalments will be forfeited and the full balance will be due for payment.
- 3.6 Court orders can be obtained from the Magistrates Court (Liability order) in relation to Council Tax and non domestic rates debt or the County Court (Judgement order) for all other types of debt. Court orders will allow the Council to take further recovery action in a number of ways and this is set out below.

Council Tax and non domestic rates

4.0 Summons to Magistrates Court

- 4.1 Reminders for Council Tax and non domestic rates will be followed by a summons to Magistrates' Court.
- 4.2 If the due amount of Council Tax or non domestic rates is not paid, then the Council will make complaint to the Magistrates' Court and send a summons for the total outstanding amount in each case.
- 4.3 The summons gives the time, date and venue of the hearing. It explains that proceedings will be stopped if the total amount due is paid. The total amount due is the combined amount of Council Tax or non domestic rates together with court and authority fees. The level of fees should be reviewed annually and agreed with the Magistrates' Court.

- 4.4 If an arrangement has been accepted following the issue of the summons, appearance at court is not necessary. The magistrates can only determine liability for Council Tax or non domestic rates; they cannot hear other matters nor make arrangements for payment. If the court is satisfied that the person named in the complaint is liable for the debt, it will grant the Council a liability order.
- 4.5 The summons urges people to get in touch with the Council. It explains that no action will be taken to enforce the liability order if an arrangement to repay the arrears has been made and is followed. Guidance notes are provided which will explain the situation if the amount due is not paid and how to make an arrangement.

5.0 Liability order

- 5.1 Liability orders can be obtained from the Magistrates' Court for the recovery of Council Tax and non domestic rates. The methods of enforcement available to the Council if a liability order is granted are listed below.

Council Tax only

- Attachment of earnings order (for persons in employment)
- Attachment of benefit (for persons receiving income related benefits)
- Attachment of allowances (for elected members receiving allowances)
- Charging order (debt secured on assets)

Council Tax and non domestic rates

- Taking control of goods by enforcement agents (previously known as bailiffs)
- Commitment to prison
- Insolvency/bankruptcy

6.0 Post liability order action

- 6.1 The liability orders that the Council are granted by the Magistrates' Court will be divided into two broad categories:
- Those where customers have made contact and have made a satisfactory arrangement for payment;
 - Those where customers have made contact, but no satisfactory arrangement has been made, or where no contact has been made.
- 6.2 Customers in the first category will be informed in writing that providing their payments are made as previously agreed, then no further action will be taken to enforce the liability order. If however the arrangement breaks down, further notices will be issued advising of the amount required to prevent the enforcement of the order. All those in this category will receive a notice of

liability order that will specify the remedies available to the Council to enforce payment.

- 6.3 Those in the second category will be sent documentation (notice of liability order) advising them that a liability order has been granted. This will ask for payment of the full amount immediately. If the customer is unable to make payment the notice will urge them to contact the Council with a view to making an arrangement to repay the debt by instalments.
- 6.4 Documentation will also include notices relating to charges connected with taking control of goods which provides a detailed breakdown of enforcement agent costs and fees that may be incurred, should the liability order be passed to an enforcement agent company.
- 6.5 In respect of Council Tax a questionnaire will be included explaining the remedies available to the Council and requesting details of all types of incomes for the purposes of establishing whether an attachment to either earnings or certain benefits is possible. This questionnaire also provides the opportunity to request a payment arrangement. It will also explain that failure to complete the questionnaire or provide false information could lead to a possible fine of up to £500.

7.0 Enforcing the liability order

- 7.1 In cases where no satisfactory arrangement has been made or agreed payments have not been made, further action will be taken to enforce the liability order. The available methods of enforcement are listed in section 5.0 and include the option of taking control of goods by a certificated enforcement agent.
- 7.2 In the case of Council Tax, where it is possible to operate an attachment of earnings, benefit or allowance that method of recovery will take priority over enforcement agent action.
- 7.3 Details of a person's earnings, benefits or allowances will have to be obtained using the questionnaire referred to above. Where the relevant information is provided, action will be taken to set up deductions with the debtor's employer or benefit office.
- 7.4 Where it is not possible to make an attachment of earnings, benefit or allowance or where the questionnaire is not returned within 14 days the Council will forward the liability order to the enforcement agent for further action. The questionnaire will state clearly that the liability order will be sent to the enforcement agent on failure by the debtor to provide the requested information.

7.5 A certificated enforcement agent is instructed to act on the Council's behalf to recover unpaid debts covered by the liability order. This can include taking control of the debtors' goods.

8.0 Commitment to prison proceedings

8.1 The final stage and last resort in the recovery of unpaid Council Tax and non domestic rates is commitment to prison. If no other method of recovery has been successful then the Council will have no alternative but to consider this action.

8.2 It is only at this stage that the magistrates have the power to remit all or part of the debt on the grounds of hardship. Only the court can write-off debt, the Council has no power to do so. If they remit part of the debt they are unable to commit the defendant.

8.3 The court can only commit a person to prison if they are satisfied that non-payment has been due to "wilful refusal or culpable neglect". It is a duty of the magistrates to make this determination having considered all relevant details of the defendant including a thorough means enquiry.

8.4 Even at this late stage, the court will normally make an order for repayment after conducting the means enquiry and suspend any term of imprisonment on condition that the order is complied with.

9.0 Executing arrest/committal warrants

9.1 If in the course of committal proceedings, a warrant of arrest or committal warrant is issued by the magistrates, the following will be adhered to at all times:

- The arrest of a female will be actioned by a female enforcement agent or if a male makes the arrest a female colleague will accompany him.
- Special arrangements must apply where children are involved. Each case will be treated on its own merits and the Council will direct enforcement agents accordingly after consultation with the Head of Finance.

Other debt (including adult social care contributions)

10.0 Legal proceedings (County Court)

10.1 Reminders for all debts which are not Council Tax or non domestic rates will be followed by a letter advising that the next step may be to commence County Court proceedings.

10.2 Alternatively, the Council may sell on debt to a third party or use enforcement agent companies (acting with enforcement agent powers where the law permits or acting as debt collection agents) to recover debts on its behalf. An appointed supplier of these services will be made via the Council's

procurement processes and controls will be in place to ensure the debtor is treated fairly.

- 10.3 Where County Court proceedings are to be taken the Council will act in full accordance with the Civil Procedure Rules. A letter before action will be sent in all cases, should there be no response to this letter the Council will prepare and send a claim form to be issued to the County Court. At this stage court fees, legal costs and statutory interest will be added to the debt. If the defendant admits or ignores the claim form the Council will obtain a County Court Judgment (CCJ) against the defendant, if the defendant disputes the claim the matter would proceed to trial in the County Court.
- 10.4 For customers in receipt of adult social care services, the Council reserves the right to consider application for Deputyship or Appointeeship of a customer's financial affairs. Such action would only be considered if there was reasonable evidence that a customer or their representative is unable, either through lack of capacity, or due to financial mismanagement to effectively manage their financial affairs, including payment of assessed social care contributions.

11.0 County Court judgements (CCJs)

- 11.1 CCJs can be obtained from the County Court for all properly incurred debts where:
- Legislation does not permit a summons to Magistrates' Court and,
 - Where, upon commencement of proceedings the defendant has either admitted the claim, ignored the claim, or, if the defendant has entered a defence, the Council has taken the matter to trial and been successful.
- 11.2 A CCJ will be registered on the public Register of Judgments, Orders and Fines; it is this register that is searched when credit checks are carried out. Therefore it will affect the credit rating of the defendant until the debt been repaid.
- 11.3 If a CCJ is repaid within one month the entry on the register will be removed completely once the defendant has provided proof to the court that they have paid the sum in full.
- 11.4 If a CCJ is paid in full after one month has elapsed the defendant can apply for a Certificate of satisfaction, again they will need to provide proof of payment in full to the court. This will see the entry on the register that relates to the judgment be marked as 'satisfied'. However, the entry does remain on the register.

12.0 Enforcing a County Court judgment

- 12.1 Enforcement action is taken in any case where a CCJ has been obtained and will be determined based on the information that is known about the

defendant. The department that is owed the debt may be consulted as to the preferred method of enforcement as several options are available.

12.2 Methods of enforcement available are:

- Warrant of execution/High Court Writ (County Court bailiff/High Court sheriff)

This action results in a County Court bailiff/High Court enforcement officer visiting the property of the defendant with a view to taking control of goods if payment is not made.

- Attachment of earnings order (for persons in employment)

This action results in an amount of money determined by the court being deducted from the defendant's wages/salary on each occasion of payment until the CCJ is cleared.

- Charging order

This action results in debts greater than £1,000 being secured on property owned by the defendant.

- Insolvency/bankruptcy

This method is usually appropriate for CCJs that are over £750 in value. The individual/company/organisation will be declared insolvent/bankrupt and any assets will be shared between the registered creditors. The priority of distributed monies once an application for bankruptcy has been made will be in accordance with HMRC ruling.

- 12.3 If information pertaining to the defendant's financial circumstances is not known, the Council may apply to the court for an order to obtain information from a judgement debtor'. This action results in the defendant having to attend at the County Court and answer questions about their finances and assets. A report is then prepared by the court and sent to the claimant so that information can be used to assess the most appropriate way to proceed.

13.0 Deferred payment arrangements for social care contributions

- 13.1 There are national guidelines provided by the Department of Health known as charging for residential accommodation guidance (CRAG) which describe how local authorities must charge for residential and nursing services.

- 13.2 CRAG sets out powers for local authorities to enter into deferred payment arrangements with customers who are eligible, under fair access to care, to receive long stay residential or nursing care.

- 13.3 The Council has a policy of offering such deferred payment arrangements for customers who do not have the means to pay their assessed contribution from current income but who have a beneficial interest in assets which have sufficient equity to make a deferred payment arrangement viable.
- 13.4 The customer and the Council will enter a deferred payment agreement which will include the customer's agreement to the Council registering a charge with the Land Registry against the specified assets.
- 13.5 The amount deferred against these assets will be the difference between that element of the assessed contribution which the customer can meet from current means-tested income and the total contribution assessed as due.
- 13.6 At the end of the deferred payment agreement the asset charge will be released when all balances due under the agreement have been received.
- 13.7 Where the customer requests the ending of the deferred payment agreement interest will be charged from the date the customer has agreed with the Council that payment in settlement of the balance due under the deferred payment agreement would be made until the date the payment is received. Where the deferred payment agreement ends due to the death of the customer interest will be charged on the amounts due under the deferred payment agreement 57 days from the date the deferred payment period ends until the date the payment is received.
- 13.8 The Council will forward an annual statement to the service user or their representative to advise of the amount accrued under the deferred arrangement.

14.0 Deprivation of capital

- 14.1 The Council will carefully review cases where a customer has transferred property or assets to other parties which would have been taken into account in the assessment of that customer's contributions to the cost of their social care.
- 14.2 Where the Council has reasonable evidence to believe the transfer was affected with the intention of reducing the customer's assessed contribution, the Council may treat the customer as still being in possession of the notional capital to the value of the property or asset and assess the charge payable accordingly.
- 14.3 The Council reserves the right to take all available legal action to overturn the transfer of such property or assets and/or recover the assessed contributions towards care charges.

15.0 Satisfactory repayment arrangements

- 15.1 Debts should be cleared immediately and in full and ideally by 31 March of the year of the account. In exceptional circumstances this repayment period may be extended into the following financial year.
- 15.2 It is important that ongoing liabilities with the Council are taken into account when determining a repayment plan. Unless this is done, arrears will continue to mount.
- 15.3 Personal circumstances will be considered as appropriate and income and expenditure forms can be completed and referrals made to the Citizens Advice Bureau in cases of difficulty.
- 15.4 The Council will offer other relevant support available within the Council or by its external partner organisations. This includes, but is not limited to, debt, housing and employment.

16.0 Enforcement agents and debt collection agents

- 16.1 Where legally authorised to do so, the Council will use enforcement agents to collect debt on its behalf. Enforcement agents have the power to recover debt by taking control of goods.
- 16.2 An enforcement agent is legally authorised to recover money owed under a County Court Judgement (County Court bailiff) or is acting on a liability order issued by the Magistrates Court (Certificated enforcement agent).
- 16.3 Enforcement agent companies may also act as debt collection agents and the Council will use this method for recovering certain types of debt (including adult social care contributions) in the absence of a County Court Judgement.
- 16.4 The Council recognises that it is important to select only organisations that will carry out its enforcement agent/debt collection services in an efficient, transparent and professional manner. This code of practice provides guidance on matters which must be considered in the selection process.
 - 1. Can they provide the service required?
 - 2. Do they have the resources (bank references etc)?
 - 3. Do they have the expertise?
 - 4. Do they have a good reputation?
 - 5. Who are their main local authority clients?
 - 6. Have at least two references been received from other local authorities?
 - 7. Are they members of a professional body?
 - 8. Do they have a code of practice for their own employees?
 - 9. Do they have proper operational procedures?
 - 10. Has a senior manager seen the organisation's offices?
 - 11. Are they fully transparent?

- 12. Will the Council have some control over their strategies?
- 13. Do they have proper indemnity and insurance arrangements?
- 14. Do they operate a client account for Cheshire West and Chester Council payments?
- 15. Do their enforcement agents hold a current enforcement agents certificate issued by a County Court?
- 16. How are their staff paid, salaried or commission?
- 17. Are their staff bonded?

16.5 The above should be seen as a checklist to good practice only. It will however be for the Council to be satisfied that any organisation appointed will act properly on its behalf. The Council's formal procurement processes will be followed.

16.6 Cheshire West and Chester Council reserve the right to terminate enforcement agent/debt collection services for unreasonable behaviour or for any other reason as it sees fit. In this event all outstanding work and monies collected will be passed to the Council.

16.7 Enforcement agent companies will be monitored on their performance. Whilst collection rates play a significant part in this process, value for money and customer care is also of significant importance.

16.8 Appointed enforcement agents are required to comply with the Council's enforcement agent code of conduct.

17.0 Irrecoverable debt

17.1 It will be appropriate and justifiable in certain circumstances to classify debts as irrecoverable and these debts will be recommended for write off and approval sought in accordance with the Council's finance and contract procedure rules.

17.2 The Council will seek to minimise the cost of write offs by taking all necessary and appropriate recovery action prior to recommending that a debt be written off.