

# **Cheshire West & Chester Council**

## **Billing and Debt Procedure document on the use of insolvency (bankruptcy) and charging orders**

### **1. Purpose of document**

This procedure covers debts owed to the Council although it is designed initially to recover council tax, benefit overpayment debt and business rates.

The Council is committed to using the most effective recovery methods available to it. This procedure will ensure that the use of insolvency is consistent and complies with the relevant legislation and best practice.

### **2. Insolvency (bankruptcy and winding up proceedings)**

#### **2.1 Legal requirements**

The legal requirements are contained within the Insolvency Act 1986. Bankruptcy action can be taken against any debtor who owes in excess of £5,000 to creditors and who, for whatever reason, is unable to satisfy his creditor's claims in full. In addition, a debtor may initiate action by petitioning for their own bankruptcy.

Winding up proceedings are used against limited companies.

Insolvency frees a debtor from overwhelming debts so they can make a fresh start, subject to some restrictions, and makes sure the assets belonging to the debtor are shared out fairly among all the creditors. However the consequences can be severe and can involve the loss of the debtor's home or business and considerable legal and trustee costs.

The level of costs will reflect the complexity of the matters involved and the extent to which the debtor cooperates with the trustee who is administering the estate. Insolvency action takes place in the County Court or the High Court if the debtor resides in London.

#### **2.2 Use of solicitors to undertake this work**

The Council will refer appropriate cases to a solicitor who has the necessary experience and expertise to carry out insolvency work on the Council's behalf.

These solicitors will deal with all matters connected with insolvency from the issue of the Statutory Demand to dealing with contested matters.

2.3 The Council will consider using insolvency proceedings under the following circumstances (*the list is not exhaustive*):

- Where the debt exceeds £1,500 (or a lower limit of £750 in certain circumstances including where fraud is involved) and the debtor has sufficient assets or equity to ensure the debt is recoverable by the Official Receiver or the Trustee.
- Where the debtor is not making regular and mutually agreed payments that are sufficient to clear accruing debt and the arrears within an acceptable timescale.
- Where insolvency action is considered most effective in recovering from a particular debtor.
- Where the debt has arisen as a result of fraud.
- Where specific assets cannot be identified but there are indicators that the debtor is one of high material worth for example, renting high value property/has a high salaried profession.
- Where bankruptcy action would encourage payment from specific groups of debtors where their credit rating is important to them, for example company directors, self employed people and those people needing finance.

#### 2.4 Special Circumstances.

The following three bullets must be considered before bankruptcy proceedings commence or as part of any further review under paragraph 2.5 below. If any of the circumstances apply careful consideration must be given before proceeding with bankruptcy proceedings.

- Where a debtor, as a result of age, severe mental illness or serious learning difficulties cannot deal with their affairs or is someone similarly affected who falls within the provisions of the Equality Act 2010.
- Where the debtor is currently in receipt of 100% Council Tax Rebate with no accruing debt.
- In circumstances where there has been no recorded contact at all with the debtor (by any method) an attempt to visit the debtor at the premises should be made (unless the debtor resides outside the Borough) and a record made whether abortive or not.

## 2.5 Consideration of bankruptcy and officers actions

A recommendation for the council to begin bankruptcy proceedings will be made by An officers at grade 8 or above. In all cases a decision pro-forma will be completed for consideration by the Billing and Debt Manager .

As part of the consideration as to whether bankruptcy action is appropriate in an individual case, officers will consider the overall debt position, the financial position including income and equity, personal circumstances and the level of engagement including previous payment history.

The more information held about the debtor the more efficient the decision making process will be in terms of selecting the most effective enforcement option.

As part of the decision making process the Council officer will seek to build a picture of the debtor and their circumstances and will achieve this in various ways, including some or all of the following activities. *(The list is not exhaustive)*.

- Demanding financial information in writing following a liability order being granted whilst stating bankruptcy is an option to be considered.
- Checking all Council Tax records and if possible any other records to see if there is any reason bankruptcy would not be appropriate as in Section 2.4.
- Checking with benefits to ensure that all council tax reduction due to the debtor has been posted to the council tax account and that their records do not indicate that the debtor lies within the criteria mentioned in Section 2.4.
- Checking the Land Registry to confirm property assets.
- Checking with a credit reference agency for information on outgoings, requests for finance, mortgages and other financial information.
- Checking known or potential employment details.
- Checking benefit overpayment records and business rates records (and including all debts in the bankruptcy action).
- Checking with private sector housing contacts and with the adult services team.
- Checking Companies House records for business information.

In all cases, before sending a case to a solicitor the Council will send a pre-bankruptcy warning letter (sample attached as Appendix 2).

This will give 28 days notice of the Council's intention to commence bankruptcy proceedings. As part of this correspondence we will issue the guidance booklet

'Guide to Bankruptcy' as issued by the Insolvency Service. This fully details the effects of bankruptcy action, the alternatives to it, a glossary of terms and where to go for help and advice.

Where proceedings are initiated a record of all contact, comments made (including hearsay from third parties) from all agents of the Council will be maintained.

A case review meeting to be held if new information is acquired to determine whether it impacts on the already commenced proceedings. The Senior Manager – Revenues and Benefits will ensure measures are in place to conduct the review.

Particular attention in determining whether to continue to proceed will be made in relation to any (previously unknown) reported health condition.

## 2.6 Publicity

When a Bankruptcy Order is granted the administration of it lies with the Official Receiver (OR) or an Insolvency Practitioner (IP). The fact that the order has been granted is advertised in the London Gazette and in a local newspaper.

The OR/IP will also notify other bodies such as local authorities, utility suppliers, land registry, National Savings and Investments etc. to give them an opportunity to submit claims of their own and to prevent illegal disposal of assets.

In appropriate circumstances; the Senior Manager - Revenues & Benefits will issue press releases on specific cases.

## 3. Charging Orders

### 3.1 Legal Requirements

If the aggregated balance on Council Tax Liability Orders for a property is over £1,000 then an application may be made for a Charge to be placed on the same property only, to secure the debt owed to the Council. Charging Orders are not a method of enforcement in that the debt remains unpaid until the property is sold and the Charge extinguished by the payment of the debt from the proceeds.

The property may never be sold or not for a considerable time and if no further action is taken then the Charge will be extinguished after twelve years in any event. If the debt is to be actively recovered then following a Charging Order being obtained, an application has to be made to the Court for an Order of Possession and Order for sale.

### 3.2 Use of solicitors to undertake this work.

The Council will refer appropriate cases to a solicitor. Solicitors have been appointed to carry out work on Charging Orders on the Council's behalf. These solicitors are fully authorised to deal with applications for Charging Orders, Orders for Sale and Possession and contested matters.

### 3.3 The Council will consider using a Charging Order in the following circumstances (*the list is not exhaustive*):

- Where the property is currently for sale voluntarily and a charging order is used as a way of securing the debt by agreement with the council.
- Where the property is owned by a debtor who resides outside UK jurisdiction.
- Where a debtor, as a result of age, severe mental illness or serious learning difficulties cannot deal with their affairs.
- Where the debtor's whereabouts are unknown making service to allow bankruptcy action difficult.
- Where a payment arrangement has been agreed on the basis that the debt is secured via a charging order.
- Where there is council tax debt and a charging orders is obtained, to assist the council to address the issue of urban blight caused by empty derelict properties.

### 3.4 Decision making.

The number of cases is very small. An officer and the Billing and Debt Manager will consider each case on its own merits being mindful of all the facts and the level of arrears.

## **4. Management checks**

Prior to the insolvency contractor being instructed the Council's officer will complete the pro-forma and obtain approval from the Billing and Debt Manager .

The form is attached at Appendix 1 and explains how the decision to use bankruptcy/charging order has been arrived at.

## **5. Reporting arrangements**

The solicitors contracted to the Council will provide reports on a monthly basis covering all aspects of the work being undertaken.

## **6. Procedure review**

This procedure will be reviewed on an annual basis in order to ensure it remains valid, effective and relevant.

## Appendix One- Referral and approval form

### Insolvency referral form

**Council Tax reference:**

#### 1. Debtor's details

Name:

Current address:

Tenure Type and Status  
(Owner occupier, rented, landlord)

Date of birth:

Age:

Phone Number:

#### 2. Relevant information from background checks:

##### Council Tax information

Engagement with Council Tax:

Evidence of health issues (if possible make contact with Adult Services for information):

Employment status and details:

Details of any joint and several liability:

##### Benefit information

Benefit history including and CTB fraud:

Current benefit entitlement:

##### To be completed by the Benefits Service

All Benefit entitlement paid to Council Tax account?

Yes · No ·

Checked by:

Date:

Position:

**3. Other information on file** *(please tick the appropriate box)*

Documents obtained by: Land Registry ·

Experian ·

LoCTA ·

Bankruptcy warning letter sent?

Yes · No ·

Date of issue:

Details of any known assets:

Reasons for referring this case for bankruptcy.

Please give full details including the other methods of recovery that have been considered to recover this debt.

Referred by:

Date:

Position:

Approved by:

Date:

Position: Billing & Debt Manager

#### 4. Details of debt

Is any of the debt as a result of benefit fraud?

Provide details:

Property address:

Council tax account reference

(Provide details of any joint and several liability):

Liability period (dd/mm/yy)	Gross charge £	Less discount £	Less benefit £	Less payment £	Costs £	Balance £	Liability order date (dd/mm/yy)
to							
to							
to							
to							
to							

Business rates account reference:

Liability period (dd/mm/yy)	Gross charge £	Less discount £	Less benefit £	Less payment £	Costs £	Balance £	Liability order date (dd/mm/yy)
to							
to							
to							
to							
to							

Overpayment of housing benefit reference:

Liability period (dd/mm/yy)	Gross charge £	Less discount £	Less benefit £	Less payment £	Costs £	Balance £	Liability order date (dd/mm/yy)
to							
to							
to							
to							
to							

Total Debt:



## Appendix 2 - Bankruptcy warning letter

Billing & Debt  
PO Box 187  
Ellesmere Port  
CH34 9DB  
Tel: 0151 356 6789  
Fax: 0151 356 6644  
Web: [www.cheshirewestandchester.gov.uk](http://www.cheshirewestandchester.gov.uk)

Mr Joe Bloggs  
9 Aardvark Close  
Anytown  
Cheshire  
CW7 1AH

our reference:	your reference:	please ask for:	date:
NN/ES/CTRE1		Recovery Department 0300 123 7022 email: <a href="mailto:counciltax@cheshirewestandchester.gov.uk">counciltax@cheshirewestandchester.gov.uk</a>	18 <sup>th</sup> January 2011

Dear Sir,

### **Notice of intention to commence bankruptcy proceedings in respect of unpaid council tax, account reference 20xxxxxxx**

Cheshire West & Chester Council are considering instigating bankruptcy proceedings against you for non payment of Council Tax in the sum of £xxxx.xx

The amounts due have been secured by liability orders issued by the Magistrates' Court and are detailed in the enclosed bills.

Being made bankrupt is a serious matter and unless you pay the above amount within 28 days of the date of this letter I may instigate proceedings against you in which you will incur further substantial costs. You will also have to give up any possessions of value and your interest in your home.

Payment can be made by credit card or debit card using the 24 hour payment line on 0300 123 7029. Alternatively you can pay on line at [www.cheshirewestandchester.gov.uk](http://www.cheshirewestandchester.gov.uk) . Please quote your council tax reference number at all times. Details of the council's procedural document for insolvency and the council's council tax code of practice is available on the website.

I refer you to the enclosed 'Guide to bankruptcy' booklet which explains in detail the processes involved, however, this booklet is intended for general guidance only and should you be in any doubt as to your situation you are advised to seek independent legal or financial advice.

Yours faithfully,

Senior Billing & Debt Officer.

End. September 2015