



London Borough of Bromley

Revenues and Benefits Service

Policy Document on the use of Insolvency (Bankruptcy) and Charging orders

1. Purpose of document

This policy covers debts owed to the Council for all revenue streams including Council Tax, Business Rates, Housing Benefit Overpayments and all other Sundry debts. The Council is committed to using the most effective recovery methods available to it. This policy will ensure that the Services 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. Essentially, 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 solicitors who are fully authorised to 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 (this list is not exhaustive):

- Where the debt exceeds £5,000 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 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.

If made aware of the following circumstances prior to a Bankruptcy Order being obtained, the Council will consider withdrawing proceedings in favour of alternative enforcement action.

- Where a debtor, as a result of age, severe mental illness or serious learning difficulties cannot deal with their affairs.

2.5 Decision Making

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.
- Warning of bankruptcy action and encouraging contact by the issue of a letter, including a guidance booklet. The booklet "Guide to Bankruptcy" issued by the Insolvency Service fully details the effects of bankruptcy action, the alternatives to it, a glossary of terms and where to go for help and advice. See www.insolvency.gov.uk where free copies are available to order.
- Checking all Council Tax records to see if there is any reason bankruptcy would not be appropriate as in Section 2.4.
- Checking with Social Services to see whether the debtor is "known" to them especially in a vulnerable capacity
- Checking H.M. 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 Companies House records for business information.
- Visiting the debtor to ascertain residency and/or to make enquiries as to the debtor's situation.

A Senior Officer will consider each prospective case on its merits and will record the reason(s) for taking the course of action taken at the relevant stage in the process.

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. 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.

This Policy will be available on the Council's web site.

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. 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 (**this is not applicable on debts under £5,000.**)

3.2 Use of solicitors to undertake this work.

The Council will refer appropriate cases to solicitors, who 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 other recovery remedies have failed or considered inappropriate.

- 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.

3.4 Special Circumstances.

If made aware of the following circumstances prior to a Charging Order being obtained, the Council will consider withdrawing proceedings in favour of alternative enforcement action.

- Where a debtor, as a result of age, severe mental illness or serious learning difficulties cannot deal with their affairs.

3.5 Decision Making.

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 Charging Order is a possible option to be considered if the debtor own the subject property.
- Checking all Council Tax records to see if there is any reason Charging Order action would not be appropriate as in Section 3.4.
- Checking with the Benefits Service to ensure that all Council Tax Benefit due to the debtor has been posted to the Council Tax account
- Checking with Social Services to ascertain whether the debtor is "known" which might negate the possibility of pursuing an Order for Sale for consideration of securing the debt for the Council.
- Checking H.M. Land Registry to confirm property assets.
- Checking with a suitable Service Provider, e.g. Baker Tilly that the subject property is free from other charges and that that there is sufficient equity in the property..

- Making at least one visit to the subject property in an attempt to engage the debtor to seek a solution, and/or establish whether the debtor may be vulnerable whilst also establishing occupation.

A Senior Officer will consider each prospective case on its merits and will record the reason(s) for taking the course of action taken at the relevant stage in the process.

4. Reporting Arrangements

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

5. Policy Review

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