

Introduction to Council Tax Seminar



Options for Post Liability Order Recovery

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Options for Post LO Recovery

LIABILITY ORDER IN RESPECT OF COUNCIL TAX			
Defendant	Sum Payable and Outstanding	Cost of Complainant	Aggregate liability order defendant
			
49205 312276160 PASCOE, MR CHRISTOPHER	MR AE POWELL MRS J POWELL	FOLKES, MR ALEX	MISS SASHA GILLARD-LOFT
1840.31	833.85	811.07	210.00

Legislation

The Local Government Finance Act 1992;

- The Council Tax (Administration and Enforcement) Regulations 1992 (SI 1992/613);
- The Council Tax (Deductions from Income Support) Regulations 1993 (SI 1993/494);

Part 3 – Tribunals, Courts and Enforcement Act 2007;

- Schedule 12 – Taking Control of Goods - The Procedure
- The Taking Control of Goods Regulations 2013.

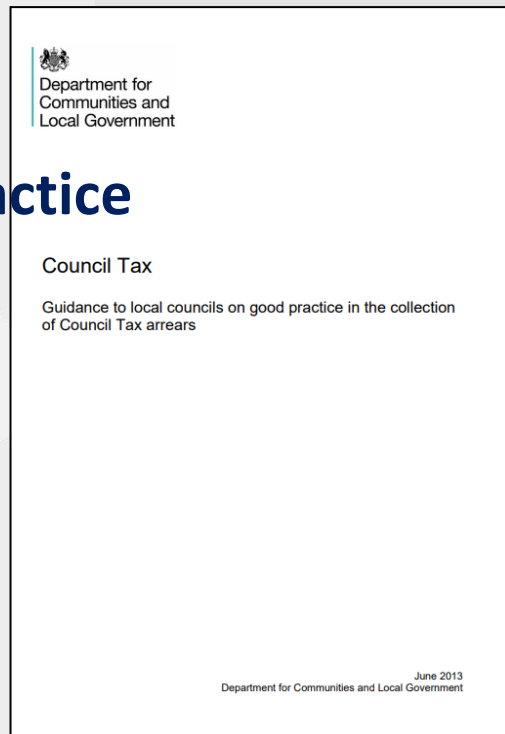
Insolvency Act 1986



Council Tax – Best Practice

Council Tax – Guidance to local councils on good practice in the collection of Council Tax arrears

- Section 3 – Enforcement
- Section 4 – Working with Bailiffs
 - Actively managing contracts;
 - People in vulnerable situations.



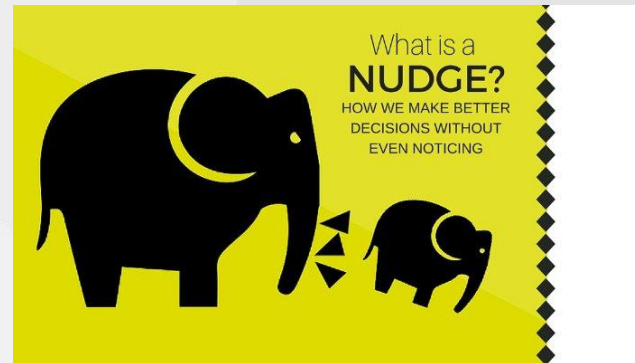
Taking Control of Goods: National Standards (April 2014)

<https://www.gov.uk/government/publications/bailiffs-and-enforcement-agents-national-standards>



Discretionary Arrangements

- NUDGE!
- Behaviour Management;
- Negotiation;
- Agreed Parameters (Arrangements);
- AEO Deductions;
- Enforcement Agent Fees;
- Direct Debit Sign Up;
- Cancellation of LO Costs!
- Recovery Code of Practice!!



THE
BEHAVIOURAL
INSIGHTS TEAM. ♦



The Behavioural Insights Team



If you want to encourage a behaviour, make it:

Easy, Attractive, Social and Timely (EAST).

- ❖ **Easy** – let people select what you want them to choose;
- ❖ **Attractive** – colour, images, fonts;
- ❖ **Social** – social norms; peer pressure;
- ❖ **Timely** – when to contact them.



Enforcement Remedies

Without further recourse to Court:

- Request Financial Information (*Regulation 36 & 56*);
- Deductions from Benefits (*SI 1993/494*);
- Attachment of Earnings Order (AEO) (*Regulations 37 to 43*);
- Attachment of Allowance Orders (*Regulation 44*);
- Enforcement by Taking Control of Goods (*Regulation 45*);
- Commitment to Prison (*Regulation 47*);
- Insolvency (*Regulation 49*);
- Charging Order (*Regulation 50*).

Duty of Debtors

Duties of debtors subject to liability order (*Reg 36*);



duty

/ˈdjuːti/

noun

noun: **duty**; plural noun: **duties**

1. a moral or legal obligation; a responsibility.
"it's my duty to uphold the law"

“Duty to supply relevant information to the billing authority...”

- Name and address of employer;
- Earnings or expected earnings;
- Net earnings (less usual Tax; National Insurance etc.);
- Works ID No;
- Other sources of income (Benefits/Interest/Dividends);
- If joint and severally liable with another.



Offences

- Request MUST be made in writing;
- Information is to be supplied within 14 Days.

Penalties/Fines:

- Failing to provide relevant information (without reasonable excuse); or
- Providing false information;
- Liable for a fine not exceeding **Level 2 (£500)** for failing to provide and **Level 3 (£1,000)** for providing false information.



Deductions from Benefits

Application MUST contain:

- Name and address of the debtor;
- The LA details making the application;
- Details of the court that granted the liability order and date;
- Amount of the specified arrears;
- Total amount to be deducted (less part-payments or reduction);
- National Insurance number and/or debtor's date of birth;
- Type of benefit in payment (if known);
- The LA's unique identifier, (5 figure AP number).

Deductions from Benefits (2)

GOV.UK call them:

Third Party Deductions

Advantages:

- Guaranteed something towards the debt;
- Low maintenance once set up.

Disadvantages:

- £3.70 per week deduction (£192.40 per year);
- Unlikely to be able to make multiple deductions;
- Can take years to clear (if ever);
- DWP admin is not efficient (backlogs in some areas).
 - 6 weeks to set up;
 - Monthly pay-overs;



Attachment of Earnings Orders

Firstly, must have some idea where they work;

- Local Authority makes an Attachment of Earnings Order;
- Form Specified in the Schedule to the regulations;
- Accompanying notes to Employer and Employee/Debtor;
- Deductions Set in Tables in Schedule 4 (as amended);
- Duties on the Employer to comply and make deductions;
- Employer can charge £1 admin fee per deduction;
- Maximum of 2 AEO's in place concurrently;



Attachment of Earnings Orders (2)

Advantages:

- Can be used as negotiation tool;
- Little further administration once in place;
- Rehabilitation of the debtor;
- Prosecute for failing to comply or supplying false information.

Disadvantages:

- Deductions fixed by tables: low income = low deduction;
- Can cause financial hardship;
- Employer administration – worst case collusion/fraud.

AEO - Weekly Tables

Deductions table for a Council Tax Attachment of Earnings Order

Table A - Deductions from weekly earnings

(1) Net earnings	(2) Deduction rate (percentage)
Not exceeding £75	0%
Exceeding £75 but not exceeding £135	3%
Exceeding £135 but not exceeding £185	5%
Exceeding £185 but not exceeding £225	7%
Exceeding £225 but not exceeding £355	12%
Exceeding £355 but not exceeding £505	17%
Exceeding £505	17% in respect of the first £505 and 50% in respect of the remainder

AEO - Monthly Tables

Table B - Deductions from monthly earnings

(1) Net earnings	(2) Deduction rate (percentage)
Not exceeding £300	0%
Exceeding £300 but not exceeding £550	3%
Exceeding £550 but not exceeding £740	5%
Exceeding £740 but not exceeding £900	7%
Exceeding £900 but not exceeding £1,420	12%
Exceeding £1,420 but not exceeding £2,020	17%
Exceeding £2,020	17% in respect of the first £2,020 and 50% in respect of the remainder

Attachment of Allowances

Regulation 44



Applies to members of a **Billing Authority** or **Precepting Authority**;

Follows the same principles as Attachment of Earnings Orders;

Keep Finance Director informed as may need to prohibit members voting on certain issues until they have paid any arrears.

Advantages:

Provides a remedy where a member seeks to take a political stance to not pay Council Tax.

(BREXIT and previously for Community Charge/Poll Tax).



Taking Control of Goods

Regulation 45 “Where a liability order has been made, payment may be enforced using the Schedule 12 procedure.”

Enforcement Agents to take control of goods;

- Compliance Stage;
- Enforcement Stage;
- Sale Stage;

Usually a last resort where debtor has failed to supply information.

Regulation 45a deleted:

- No longer a requirement to send a 14 Day Letter!

TGOG – Compliance Stage

The initial action is a **Notice** so avoids perceived “*aggressive*” action of a visit to remove/take control of goods;

Identifies potential issues earlier: Vulnerability; Can’t Pay; Gone Away.

Statutory Notice of Enforcement (NOE);

- *Binds the debtors goods;*
- *Prescribed content provides signposting to FREE Advice;*
- *Informs: **How, Where, When** to pay by and contact details.*
- *Clearly details the consequences of failing to pay;*
- *Includes details of the further fees.*

Provides a minimum 7 clear days before a visit can be made.

TGOG – Enforcement Stage

Commences when visit is actually made;

- England and Wales only;
- Relevant Premises;

Incurs a minimum fee of £235.00;

- Plus 7½ % on debt >£1500

Visits between 6:00 am and 9:00 pm

- Outside these hours for Commercial Debts;

Visits any day of the week (including Sunday);

- Client Guidelines - respect for religious festivals;

TGOG – Sale or Disposal Stage

- Should have **controls** in place to prevent abuse of the fee:
- Regulation 12 Taking Control of Goods (Fee) Regulations 2014

Recovery of fees from vulnerable debtors

12. Where the debtor is a vulnerable person, the fee or fees due for the enforcement stage (or, where regulation 6 applies, the first, or first and second, enforcement stages as appropriate) and any disbursements related to that stage (or stages) are not recoverable unless the enforcement agent has, before proceeding to remove goods which have been taken into control, given the debtor an adequate opportunity to get assistance and advice in relation to the exercise of the enforcement power.

“.....given the debtor adequate opportunity to get assistance and advice...”

- LA's should have guidelines in respect of the sale fee.
- Sale stage should be the exception and not the rule!



TGOG – Fees

Schedule of Fees, Regulation 4, SI 2014/1

Stage	Fixed Fee	Percentage Fee	Trigger
Compliance	£75.00	0%	Receipt of Instruction
Enforcement	£235.00	7.5% of debt > £1500	First Attendance to relevant premises
Sale	£110.00	7.5% of debt > £1500	First Attendance for purpose of transporting goods to place of sale



TGOG – Pros and Cons

Advantages:

- FREE Service to Council (Debtors pay the fees);
- With right partners - high collections at compliance - minimises fees;
- Payment in Full or Information (Case Intelligence) to use;
- Null Bona Certificate for Committal;
- Deterrent – future rehabilitation of the debtor;

Disadvantages:

- Small debts - Potential cost to debtors (£75/£310/£420);
- Last resort so is Council recovery process working?;



Stop the Knock

Stop The Knock | 

Campaign by the Debt Advice Sector to abolish the use of Enforcement Agents for Council Tax.

- Information gained under the Freedom of Information Act 2000;
- No narrative provided as to why figures may have differed;

Other campaigns and reports have include:

- Taking Control – Bailiff Reform;
- A Law Unto Themselves – Citizens Advice



TAKING CONTROL
The campaign for bailiff reform



Six steps for local authorities

Stop The Knock | 

- 1 Make a clear public commitment to reduce the council's use of bailiffs over time
- 2 Review the council's signposting to free debt advice, including phone/online channels
- 3 Adopt the Standard Financial Statement (SFS) to objectively assess affordability
- 4 Put in place a formal policy covering residents in vulnerable circumstances
- 5 Exempt Council Tax Support recipients from bailiff action (for authorities in England)
- 6 Sign the Council Tax Protocol and review the authority's current practice against the 'Supportive Council Tax Recovery' Toolkit





Committal (Regulation 47)



Where the enforcement agent reports that he was unable (for whatever reason) to find any or sufficient goods of the debtor to enforce payment, the authority may apply to a magistrates' court for the issue of a warrant of commitment.

The court shall **(in the debtor's presence)** inquire as to his means and inquire whether the failure to pay which has led to the application is due to his **wilful refusal** or **culpable neglect**.

Committal (2)

If (and only if) the court is of the opinion that his failure is due to his **wilful refusal** or **culpable neglect** it may if it thinks fit—

- (a) issue a warrant of commitment against the debtor, or
- (b) fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as the court thinks just.

The order in the warrant shall be that the debtor be imprisoned for a time specified in the warrant which **shall not exceed 3 months**, unless the amount stated in the warrant is sooner paid;

Committal – Case Law

Lots of Case Law most of it relates to when the Courts got it wrong!!

R v Poole Justices ex parte Benham 1991

Community charge case.

Debtor was young man imprisoned for having potential to earn and no actual income.

- Appeal by way of Judicial review;
- Legal aid not granted despite request;
- European court of Human Rights in 1994.

Committal – Case Law

R v Bridgend Magistrates Court ex parte Woolcock 2017

- Single parent with limited means;
- Mental health issues including depression;
- Not well enough to work;
- Committed for 81 days.

Since April 2019 the **Welsh Assembly Government (WAG)** abolished Council Tax committal in Wales



Llywodraeth Cymru
Welsh Government



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RATING & VALUATION



Committal – Pros and Cons

Advantages:

- If you select the right cases then it is worthwhile;
- Use of ALL the resources available to maximise collection;
- Positive publicity;
- Deterrent and rehabilitation of the debtor.

Disadvantages:

- Cost of Committal is prohibitive £245.00 at least;
- Difficult to select the right cases;
- Admin of Arrest Warrants is labour intensive;
- Requires specialist staff;
- When it goes wrong the consequences can be devastating.

The Future of Committal in England

Q Asked by **Steve McCabe** (Birmingham, Selly Oak)

Asked on: 04 September 2019

Ministry of Housing, Communities and Local Government

© 286630

Council Tax: Non-payment

To ask the Secretary of State for Housing, Communities and Local Government, what plans he has to remove the sanction of imprisonment for non-payment of council tax.

▼ A Answered by: **Luke Hall**

Answered on: 09 September 2019

The Government does not have any plans to remove the sanction of imprisonment for non-payment of council tax. However, **committal** to prison should only ever be the last resort in the collection of council tax arrears. Magistrates courts can only commit someone to prison for non-payment of council tax where they are satisfied that the failure to pay is due to their wilful refusal or culpable neglect. The number of **committal** warrants has been decreasing, with 34 issued in England in 2017-18.

Grouped Questions: 286631

Failed petition received 12,500 signatures;

<https://petition.parliament.uk/petitions/257681>

Insolvency (Reg 49)

Council Tax - debt for a Creditors Petition

- Section 267 of the Insolvency Act 1986;

Bankruptcy minimum threshold £5,000 (previously only £750);

Cost of instigating Bankruptcy is significant.

Case intelligence is essential;

- Do they own their own home? Or have other assets?
- Do they owe others and if so how much?
- Do they hold a position that bankruptcy may affect?

Should you instigate Bankruptcy Proceedings?



Charging Order (Reg 49)

Advantages:

- Relatively low costs and can provide the debtor with time to get funds together to satisfy the charge;
- Protects the Council's position in the short to medium term;
- Sends out the message that the Council is actively pursuing non-payment in a cost effective manner.

Disadvantages:

- Can be left waiting years for order for sale;
 - *(Especially if children or vulnerability involved);*
- Ongoing liabilities may be unpaid;
 - so require adding to the order.

Relationship between Remedies

Regulation 52 – is a bit of a ‘Grey’ area.

(2) Steps under this Part by way of attachment of allowances, attachment of earnings, distress, commitment, bankruptcy, winding up or charging may not be taken against a person under a liability order while steps by way of another of those methods are being taken against him under it.

(3) Subject to paragraphs (1) and (2)—

- (a) attachment of allowances, attachment of earnings or distress may be resorted to more than once, and
- (b) attachment of allowances, attachment of earnings or distress may be resorted to in any order or alternately (or both).

When originally drafted it was intended to prevent different enforcement remedies being undertaken concurrently in respect of the same Liability Order not for all LO's;

NB. Check if your Recovery Policy effectively deals with how to administer cases where you have deductions from benefits and other LO's outstanding.

Questions?



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