



MANCHESTER **CITY COUNCIL**

Revenues and Benefits Unit

Policy Document on the use of Insolvency (bankruptcy) and Charging Orders

1. Purpose of document

This policy 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 policy will ensure that the Unit's 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 £750 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. Following a tender process, solicitors have been appointed to carry out insolvency work on the Council's behalf. These solicitors 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 (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.

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.
- Where the debtor is currently in receipt of 100% Council Tax Rebate with no accruing debt.

2.5 Consideration of bankruptcy and officers actions

A recommendation for the Council to begin bankruptcy proceedings will be made by officers at grade Technical Officer or above. In all cases a decision proforma will be completed for consideration by either the Head of Revenues or the Head of Revenues and Benefits.

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 the Benefits Service to ensure that all Council Tax Benefit 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 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 council house sales records to determine those recently acquiring assets.
- 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-see Section 3.3.
- 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" 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.

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.

This policy will be available on the Council's web site and in appropriate circumstances; the City Treasurer 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.

Charging Orders may only be used for Business Rates debt with the agreement of the ratepayer and therefore such action will not be taken without the written consent of the ratepayer.

3.2 Use of solicitors to undertake this work.

The Council will refer appropriate cases to a solicitor. Following a tender process 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's Private Sector Housing Enforced Sale Procedure 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 Revenues Manager or Head of Revenues and Benefits 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 proforma and obtain approval from the Head of Revenues or Head of Revenues and Benefits. 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 supply a suite of reports on a monthly basis covering all aspects of the work being undertaken.

Details of all activity is included in the Revenues Service quarterly report that is provided for the City Treasurer and the Executive Member for Finance and Human Resources.

6. Policy Review

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

Current benefit entitlement

To be completed by the Benefits Service

All Benefit entitlement paid to Council Tax account?

(to insert a tick in a box, place the curser in the box first then hold down the "Alt" key and type 0252)

Yes No

Checked by: _____ Date: _____
Position: _____

3. Other Information on file *(please type inside the boxes)*

(to insert a tick in a box, place the curser in the box first then hold down the "Alt" key and type 0252)

Documents obtained by: Land Registry
Experian

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: Revenues Manager or Head of Revenues and
Benefits

4. Details of debt (please type inside the boxes)

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



Revenues and Benefits Unit

Council Tax Service
PO Box 147
Manchester
M15 5TU

To reply please contact:

24 hour payment line: 0161 273 5270
Phone: 0161 907 9400
Fax: 0161 953 8226
Textphone: 0161 953 8301
E-mail: ctax.enquiries@manchester.gov.uk

Payment Reference Number

Dear

This letter contains important information about bankruptcy proceedings please read it carefully.

My records show that you have not paid your Council Tax. The amount you owe is £xxxxx.

Manchester Magistrates' Court has granted a liability order/liability orders^[G1] against you and the amount you owe has not been paid. I therefore will be instructing my solicitors to start bankruptcy proceedings against you.

Bankruptcy is a serious matter ^[G2]and you should be aware that you will have to give up any possessions of value and your interest in your home. In addition as a bankrupt you must:

- provide information about your financial affairs;
- provide a full list of your assets;
- hand over you assets to the official receiver with all your records, bank statements, insurance policies and any other financial documents;
- stop using your bank, building society, credit card and similar accounts immediately;
- not obtain credit of £500 or more from any person or company without first disclosing you are bankrupt.

To stop bankruptcy proceedings you must pay the amount owed in full within 28 days of the date of this letter. If you cannot pay the amount owed in full you must contact me immediately.

You can make payment by telephone, online, or by cheque.

Yours sincerely