



Council Tax Debt Recovery Procedure on the use of Charging Orders and Committals

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Council Tax: Charging Orders and Committals

1. Introduction

This Policy document aims to provide a framework and a procedural protocol to enable Barrow Borough Council to use Charging Orders and Committals as an enforcement remedy.

The principal consideration is that Charging Orders and Committals are initiated only in those cases where it is the appropriate remedy having regard to the identity and circumstances of the debtor specifically whether the debtor could be considered as vulnerable (Council Tax and Benefit records will be checked and Social Services contacted and at least one visit made to the subject property to attempt to engage with the debtor) and **only** where it is considered the remedy that is most likely to achieve the purpose of the Enforcement Regulations (i.e. the recovery of the debt owed) will either course of action be taken.

Charging Orders and Committal proceedings should be carried out in an efficient, professional and cost effective manner.

2. Charging Orders

Legal Requirements

If the aggregated balance on Council Tax Liability Orders for a property is over £1000 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 necessarily 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 so such a remedy could be used where the debtor is considered vulnerable and to therefore secure the debt.

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.

The Council will consider using a Charging Order in the following circumstances (the list is not exhaustive) where other remedies have failed or been considered inappropriate:

- 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.

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- Where the debtor's whereabouts are unknown making service to allow bankruptcy action difficult.
- Where 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 Order 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.

Decision Making

An officer and the Senior Revenues Manager will consider each case on its merits being mindful of all the facts and the level of arrears.

The Council will only proceed with a Charging Order once the Senior Revenues Manager has approved such action in writing. (Email will suffice). Background details on each case will be supplied to the Senior Revenues Manager in a written summary. The Senior Revenues Manager will use this information to determine whether the case is suitable for a Charging Order, or request alternative action, or further information.

The Senior Revenues Manager will sign and authorise on the covering pro-forma issued to the acting Solicitor. A copy of which will be kept on file.

The pro-forma instruction will show:-

- The date that the instruction is passed to the solicitor;
- The name of the debtor
- The property address to which the charge relates and the debtor's current address, if different.
- The property reference number
- The council tax number(s) and the total amount being pursued.

The information will supply a breakdown of each liability order, date the order was issued and the period covered together with the amount of council tax and costs still outstanding per liability order.

This is repeated for each separate account held.

Further relevant information will be recorded e.g. any aliases, copies of land registry details and confirmation of the date of the "charging warning letter", detailing periods of liability, dates of the liability orders obtained by the Council and in each case the council tax outstanding and the costs incurred.

When a case has been issued to the solicitors a note is placed on the council tax account to ensure that all further contact from the debtor is referred to the solicitors.

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At any stage in the procedure the Council will use local authority records available to it under the terms of The Data Protection Act 1998 to attempt to gain relevant information for an assessment to be made, and will also contact other agencies e.g. Social Services.

Once a Charging Order has been obtained and where it has been confirmed that a debtor or his/her partner is aged 60 or over, or if under 60 but with dependent children under 18, then no further action in relation to a Charging Order will be taken i.e. the Council will not proceed to enforce an order for sale at that point.

It may be considered appropriate to obtain a Charging Order to secure the debt where there is evidence of mental illness, mental incapacity, severe disability, and blindness or terminal illness affecting any permanent residents at the property. This action will safeguard the most vulnerable from the effects of losing their home, but will ensure that the Council has the ability to recover the debt on behalf of the taxpayers in the Borough, in the event of a sale, or transfer upon the death of the taxpayer.

The Senior Revenues Manager may use his/her judgement at any time in the process to refuse authority for a Charging Order or to withdraw an instruction for an enforced sale where in his/her opinion the best interests of the Council would be served by this action.

Where a Solicitor is instructed to apply for a Charging Order they will be given full authority to deal with the case. In the event that a forced sale is contemplated they must seek further written instructions from the Council on whether the forced sale will be approved.

The Senior Revenues Manager will receive a full updated report on the case and use this report to determine whether to authorise the forced sale of the property.

Where a forced sale is not considered appropriate, the Charging Order will remain on the property until it is sold. The Council may still seek recovery by other methods for any debt not covered by the Charging Order.

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3. Committal Proceedings

Where the debt remains unpaid and Taking Control of Goods has proved unsuccessful the Council will need to consider the available options. Where a Charging Order or Bankruptcy are not considered viable options (i.e. the debtor does not own the Property in question or any other property) the Council will consider an application for a Warrant of Commitment.

(NB before this course of action can be undertaken it is essential that distraint should have been attempted and a nulla bona certificate confirming this provided to the Council by the enforcement agent).

There is no legal requirement for the Council to attempt other recovery options but good practice dictates that other recovery option be tried. Magistrates like to satisfy themselves that the Council has explored other recovery options prior to proceeding to a Means Enquiry.

Prior to the commencement of committal proceedings the Council will have attempted to Take Control of Goods, issued a pre committal action warning letter, issued a notice seeking financial information letter to be returned within 14 days, considered any payment arrangement offers and any possible attachments to earnings or benefit to recover the debt.

Proceedings are usually commenced with the issue of a committal summons to the debtor by first class post. The Summons fee is £240 and will be added to the debtors account.

Committal Hearing

This is effectively an inquiry by the Magistrates into a debtor's means and conduct with a view to deciding whether the failure to make payment is due to wilful refusal or culpable neglect. Such an enquiry can only be conducted in the presence of the defaulter and if the defaulter fails to appear the Council will apply for a warrant for the arrest of the debtor. This would normally be a warrant with bail, but if there is a further non-appearance the Council will consider application for a "no bail" warrant. The warrant fee is £75 which will be added to the debtors account.

The Council will normally request a person is arrested on a day of a hearing to ensure that a person is not held for an excessive time.

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Payment Order

If Magistrates are satisfied that the Council has complied with the legislation and have also taken steps to try to recover the debt through Taking Control of Goods they will consider the issue of whether payment has not been made through wilful refusal or culpable neglect. If they find either present the options available to them are:

- Issue a warrant of commitment for a period not exceeding 3 months
- Fix a term of imprisonment postponed under terms (usually an order for payment)
- Refuse to issue a warrant or fix a term of imprisonment.

Payments under an order are to be made directly to the Council and the Council will monitor to ensure that the order to pay is being maintained.

The Magistrates on hearing the evidence presented at the Inquiry into the means of a debtor also have the option to remit the debt in full or part.

Non Payment of Court Order

Where the court order is not maintained the Council will bring the debtor back before the Magistrates to seek committal to prison forthwith.

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Charging Order/Committal Checklist

Account Number:		Liabile Names:			
Debtor Name Application to be made:			Date of Birth:		
Property Address: (subject to the debt)			Correspondence address:		
Period Owed	LO Hearing Date	LO Total	Total Paid	Balance O/S	Signed LO & Copy of Court List
(Minimum of £1,000) Total:					
Recovery Action	Date *of issue & Return	Response & Notes		Payment Rec'd & Dates *as result of relevant action	
Attachment of Earnings					
Attachment of Benefits					
Taking Control of Goods <i>*Provide details of any ARRGs & contact</i>					
Telephone Recovery <i>*Provide dates/times & if a response</i>					
Home Visit <i>*Provide dates & if a response</i>					
Means Enquiry Form Rec'd					
Response to INFO Letter					
Experian Confirmation					
Land Registry Confirmation					
Benefit check					
Mental Health /Vulnerability Check					
Other					
Copy of NB for each LO on this application: yes/no	yes/no	Copy of Bailiff Notepad:			
Copy of Arrangement Schedules: yes/no	yes/no	Copy of Arrangement Default Notices:			
Copy of Full Notepad: yes/no (include Benefit notepad)	yes/no	Copy of all letters received from Debtor:			
Copy of e-mail from Social Services: yes/no	yes/no	Copy of Land Registry Official Copy:			
Copy of Experian Searches:	yes/no				
Name of Officer:		Date Referred to : Senior Revenues Manager			

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To Be Completed by Recovery Team

Statement of account for each LO: (include screen dumps as evidence)	yes/no	Copy of each signed LO & Court List:	yes/no
Pin-Point Report Returned:	yes/no	Your Final Summary Letter:	yes/no
Final Attempt Visit made: yes/no	yes/no	Charging Order/Committal Instruction Completed:	
Authorised by Senior Revenues Manager:		Date:	
Charging Order/Committal Instruction Issued to:		Date:	

Charging Order/Committal Instruction

Full Name of Debtor:		Date of Birth:
Address:		
Any other address's (correspondence/own more than 1 property):		
Account Type: Council Tax	Reference:	
Total Amount Outstanding:		
Liability Order Address & Date	Liability Period	Amount Outstanding (including Summons & LO Costs)

Information Attached:

Charging Order/Committal Checklist:	<input type="text"/>	Statement of Account:	<input type="text"/>
Copy of each LO:	<input type="text"/>	Copies of Letters:	<input type="text"/>
Copy of Land Registry:	<input type="text"/>	Evidence of Vulnerability checks:	<input type="text"/>

Any other relevant details

Date of Instruction:	Officer to Contact:
E-mail address:	Telephone:
Authorised by Senior Revenues Manager:	Date:

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Statement of Account

Debtors Full Name:

Reference Number:

Liabe Dates	Billed Amount	Discount/ Exemption (Detail type)	Benefit Awarded	Payment Received	Date	Case No.	Summons date	Summons Amount	Summons Costs	Liability Order Hearing Date	LO Costs	Total LO	Current Debt

BACKGROUND OF CASE

(Please provide a brief, factual narrative of when bills, reminders, summons, liability orders, ad-hoc letters visits or conversations)