



**Council Tax and NNDR
Debt Recovery Procedure**
Procedure Document on the use of Insolvency
(Bankruptcy)

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1. Introduction

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

*The principal consideration is that bankruptcy proceedings 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 where other remedies failed or were inappropriate (i.e. the recovery of the debt owed) will it be used.*

Bankruptcy proceedings and the subsequent administration of the bankrupt's estate should be carried out in an efficient, professional and cost effective manner.

2. Action pre-statutory demand

In determining that bankruptcy is likely to be the most appropriate enforcement remedy relevant enquiries and checks will be made before issuing a statutory demand.

- 1. Written enquires will be made of all relevant agencies who might be in a position to advise if bankruptcy would be an inappropriate option, either because of the vulnerability of the debtor or, because of the likelihood that the debt will not be recovered by the use of insolvency.*

The vulnerability enquiries should seek to determine whether any mental health, disability, age or other considerations render the use of bankruptcy inappropriate. However vulnerability (of itself) does not debar the Council from using bankruptcy proceedings provided that, having considered all of the circumstances including any identified vulnerability, it remains an evidenced and recorded decision that bankruptcy is the appropriate remedy. However, it is most likely that reverting to Charging Order proceedings to secure the debt would in such circumstance be the better option.

The other, financial and status enquiries undertaken can be obtained in the form of an Insolvency Evaluation Report or by in-house enquiries. The report will include Land Registry searches (to establish ownership), Experian Citizenvue (to establish available equity, other liabilities, evidence of occupation, company directorships, pre-existing insolvency proceedings (bankruptcy, IVA, DRO) and any other publicly available financial data). It will provide both a summary in respect of the data

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gathered and a professional opinion as to whether or not the instigation of bankruptcy proceedings is likely to result in a recovery of the debt.

- 2. Unless there has been recent direct contact between the debtor and the council, at least one attempt will be made to make physical contact with the debtor at the subject address.*
- 3. The debtor will be provided with a "Letter Before Action" explaining that the Council is considering the instigation of bankruptcy proceedings the cost and consequences of which for the debtor should the Council do so will be advised as will the steps that the debtor must take to avoid the Council instigating such proceedings. (An example of such a letter is set out as paragraph 3.*

The Letter Before Action may be posted or if possible hand delivered to the debtor when the visit is made to the property (note 2 above). However if, on that visit, contact with the debtor is not made, the Letter Before Action may be left by posting through the letterbox provided that enquiries are made with any other occupier or neighbours that confirm the debtor's continuing occupation.

Failure to make physical contact with the debtor or the obtaining of confirmation of his continued occupation will result in the Council re-checking our internal records to attempt to ensure that the debtor is in occupation.

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3. Letter Before Action – example only

CT/

17th November 2013

Any Debtor
1 Smith Street
Barrow in Furness
Cumbria
LA14

When telephoning please ask for Mr/Ms

NOTICE OF BANKRUPTCY PROCEEDINGS

Dear Mr

UNPAID COUNCIL TAX ARREARS - £5,000.00
RE: 1 SMITH STREET, BARROW IN FURNESS CUMBRIA LA14

We have been instructed by Barrow Borough Council to write to you concerning an outstanding debt due to them in the sum of £5,000.00 relating to Council Tax Arrears. Barrow Borough Council has obtained Liability Orders against you in the Barrow Magistrates Court, in relation to the arrears, and these Liability Orders remain unsatisfied. The dates and amounts outstanding under each of the Liability Orders are as follows:

Date	Amount
5 th July 2006	£1000.00
5 th July 2007	£1000.00
5 th July 2008	£1500.00
5 th July 2009	£1500.00
<u>Total</u>	<u>£5000.00</u>

STATUTORY DEMAND

This letter is a formal demand for payment of **£5,000**. If we do not receive payment in full of this sum within 7 days of the date of this letter then we are instructed to serve a statutory demand upon you. The statutory demand is a document which comes before the issue of a bankruptcy petition, and if you do not pay the debt in full within 21 days after you are served with it then that is evidence that you are unable to pay your debts as they fall due. The significance of this is that it enables Barrow Borough Council to issue a bankruptcy petition against you in the local bankruptcy court.

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BANKRUPTCY PETITION

If the Council issues a bankruptcy petition at court, and you then pay the debt, you will be entitled to have the bankruptcy petition dismissed. The Council will seek an order that you are liable for their legal costs of the bankruptcy proceedings. The amount of these legal costs will be significant, and as a guide, the legal costs involved where you pay the debt after issue of the bankruptcy petition and before the first hearing of the petition, will be in the region of £1,200.00. If additional work is necessary, for example attending a number of hearings, or drafting evidence then this figure may be much higher.

BANKRUPTCY ORDER

If the debt remains unpaid after the issue of a bankruptcy petition then the court can make an order declaring you bankrupt. If you are declared bankrupt then any assets you own, including your interest in your home will vest in the Official Receiver. You will no longer have any interest in your home. The Official Receiver may appoint a trustee in bankruptcy to deal with your bankruptcy estate. The Trustee's role will be to realise any assets, in order to pay the debts (not only the debt due to the Council, but also any other debts you may have) and expenses of your bankruptcy, this may include taking possession of your home and selling it, in order to realise your share of any equity within the property.

If a Trustee is appointed then his costs will be paid out of your bankruptcy estate. These costs will be significant. As a guide, if the debts and expenses were paid by a third party shortly after the appointment of the Trustee, then his costs may be in the region of £2,000.00 (this is in addition to our client's costs of the petition mentioned above). Should the Trustee take possession of your property and sell it then he will incur significant costs, and also his own legal costs. We estimate that the costs due in this case may be as much as £10,000.00 - £15,000.00. These costs would be payable out of your share in the equity of your property, before any payment to creditors.

YOUR HOME

This is a serious matter, and your home is at risk if you are declared bankrupt. We urge you to take independent legal advice immediately, from either your solicitor, or the Citizens Advice Bureau. You can find more information about bankruptcy from the Insolvency Service, at their website: www.insolvency.gov.uk, and in particular the following website address: www.insolvency.gov.uk/otherinformation/supportadvice.htm. If a bankruptcy order is ultimately made against you this will have a very detrimental effect on your credit rating, and it is unlikely that you will be able to obtain any credit.

COSTS

If the debt due to Barrow Borough Council is not paid within 21 days, or following service of a statutory demand and a bankruptcy petition is issued

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against you then you may become liable for significant costs, as detailed above. If the debt is paid in full within 21 days those costs can be avoided.

If we do not hear from you within the specified time, a Statutory Demand will be issued and served on you without any further notice.

Yours faithfully

For Liberata on behalf of Barrow Borough Council

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4. Bankruptcy 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
<i>(Minimum of £5,000.00)</i> 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 Court Team:		

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To Be Completed by Court Team

<i>Statement of account for each LO: yes/no (include screen dumps as evidence)</i>	<i>yes/no</i>	<i>Copy of each signed LO & Court List:</i>
<i>Pin-Point Report Returned: yes/no</i>	<i>yes/no</i>	<i>Your Final Summary Letter:</i>
<i>Final Attempt Visit made: yes/no</i>	<i>yes/no</i>	<i>Bankruptcy Instruction Completed:</i>
<i>Authorised by Recovery Team Manager:</i>		<i>Date:</i>
<i>Bankruptcy Instruction Issued to:</i>		<i>Date:</i>

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5. Bankruptcy instruction

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

Information Attached:

Bankruptcy Checklist:

Statement of Account:

Copy of each LO:

Copies of Letters:

Copy of Land Registry:

Evidence of Vulnerability checks:

Any other relevant details

<i>Date of Instruction:</i>	<i>Officer to Contact:</i>
<i>E-mail address:</i>	<i>Telephone:</i>
<i>Authorised by Recovery Team Manager:</i>	<i>Date:</i>

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Statement of Account

Debtors Full Name:

Reference Number:

Liable 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, LO's, ad-hoc letters visits or conversations)

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6. The bankruptcy proceedings (background)

Legally, the preparation and service of a statutory demand is not part of the bankruptcy proceedings. It is the failure by the debtor to comply with the requirements of the statutory demand that provide the basis upon which the Council will apply to the relevant bankruptcy court for the issuing of a bankruptcy petition (which initiates the bankruptcy proceedings).

1. The Statutory Demand

The Council may decide that the preparation and service of the statutory demand is to be undertaken by the Council or whether it is to be referred to an external solicitor. The Council will ensure compliance with the service requirements in respect of the statutory demands which are required to be served personally. As there is a possibility that the debtor will seek to avoid such personal service, service may be made by "substituted service".

Personal service will be attempted and substituted service will only be used if personal service is unachievable.

If it transpires that personal service is not possible because the debtor no longer resides at the subject property the Council will reconsider whether or not the proposed bankruptcy proceedings are well founded.

If the statutory demand is either paid in full or instalments have been agreed (maximum period 3 months) the cost of preparing and serving the statutory demand will be met by the Council.

The Council will issue the bankruptcy petition no later than 4 months from the date of service of the statutory demand.

2. The Bankruptcy Petition

Where the debtor has failed to comply with the statutory demand the Council will ask the Court to issue a bankruptcy petition.

However, prior to the issuing of the petition the Council will review the case to confirm that it is still appropriate to pursue the debt via bankruptcy proceedings if in case any information or intelligence had been gathered following the statutory demand process that might make the prosecution of bankruptcy proceedings inappropriate or whether it would be more advisable to revert to securing the debt through Charging Order proceedings.

*Once the decision to proceed to petition is confirmed, application for the issue of the petition will be made to the appropriate court and once issued, the bankruptcy petition will be classed as a **class action** which means there will a need to have regard to the interests of any other creditors of the debtor.*

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3. The Bankruptcy Hearing

The court will have fixed the date and time to hear the bankruptcy petition. Unless agreed by the court, the Council will attend or be represented at the hearing. The court will require the Council to lodge a Certificate of Continuing Debt and also a list of those creditors that have advised the Council of their intention to either support or oppose the petition. At the hearing, provided that the debt petitioned remains either unpaid in its entirety or else exceeds the statutory minimum (£5,000.00) the Council will expect that the court will make a bankruptcy order.

Statutory demand procedure – flowchart

