

METROPOLITAN BOROUGH OF WIRRAL

FINANCE & BEST VALUE OVERVIEW & SCRUTINY COMMITTEE

26 SEPTEMBER 2006

REPORT OF THE DIRECTOR OF FINANCE

COUNCIL TAX COLLECTION: USE OF INSOLVENCY PROCEEDINGS - BANKRUPTCY & LIQUIDATION

1. EXECUTIVE SUMMARY

- 1.1 This report is an analysis of two of the lesser known statutory collection methods available to the Council to collect money owed by defaulting taxpayers.

2. BACKGROUND

- 2.1 Council Tax replaced Poll Tax in 1993. As part of the legislation there are various collection methods prescribed after a non payer has been taken to Court and a Liability Order obtained. These are as follows;

Attachment of Earnings,
Deduction from Benefit,
Bailiffs,
Insolvency,
Charging Orders
Committal to Prison

- 2.2 Any action can be used more than once and in any order except Committal, which is the ultimate sanction, where an attempt to collect by bailiffs is a prior requirement.

- 2.3 During the financial year 2005-06 Wirral undertook recovery work and obtained 11,878 Liability Orders against non-payers. From these:-

1,388 non-payers had Attachment of Earnings made
4,614 requests for Deductions of Benefit were made and
8,319 accounts were passed to Bailiffs to collect.
Some recovery methods were used more than once in a case.

- 2.4 Insolvency action was commenced on 118 accounts and Charging Orders applied for in 12 cases. 84 Committal summonses were issued. No one was committed to prison for non-payment. However, suspended sentences were issued in some cases.

3. **INSOLVENCY**

- 3.1 For an individual to be made bankrupt he/she must owe a creditor more than £750. An individual who is made bankrupt loses control of his or her assets, the facility to obtain credit over £500, the ability to act as a Company Director, the ability to trade under any other name unless all persons concerned in the bankruptcy are notified and is unable to practice as an Accountant, Lawyer, Member of Parliament or Councillor. A first-time bankrupt will normally find themselves discharged in 12 months or less. A person can apply to be made bankrupt themselves (Voluntary) or by application of a creditor(s) (Involuntary). Fees involved in the process are recoverable from the non-taxpayer. Liquidation is similar but applies to the winding up a company. The Official Receiver or agent appointed will seek to realise the debtor's assets including in some cases the forced sale of property.
- 3.2 Timescales vary but normally are as follows. A demand is sent asking for payment or a suitable arrangement to be made within 21 days and warning of the consequences of non-compliance. If payment is not made a Statutory Demand is prepared and served on the debtor. The debtor again has 21 days to pay or make a suitable arrangement. The debtor can apply for the demand to be set aside at a County Court hearing at which the Council will be represented. If there is no response to the demand an application will be made for a Bankruptcy petition at court. A hearing date is arranged usually for 2- 3 months time. The petition will be served on the debtor. Payment made in full or a suitable arrangement will result in the request for a dismissal of the petition. After the hearing and if an order has been made a request for annulment can still be made, usually as the debt has been paid. The Council does not oppose such an annulment but other requests for an annulment are more likely be opposed by the Council and I would be represented at the annulment hearing
- 3.3. The petition is heard and may be followed by a Bankruptcy Order which sees the individual declared bankrupt until the debts and costs, including the Authority costs in bringing the action, are paid or the person is discharged after all available assets are realised.
- 3.4. Insolvency proceedings are used as the last resort before seeking committal to prison. I have on occasion stopped committal proceedings to invoke Insolvency. A recent High Court case stated the use of Insolvency was not excessive given that the alternative course of action was Committal to prison.

- 3.5. Insolvency is used as a last resort after alternative methods have been tried and failed. This includes reference to the Council Anti-Poverty strategy and Fair Debt policy. Accounts put forward for Insolvency action are scrutinised by officers and only the accounts which have the best chance of collection by this method are put forward for action to be taken.
- 3.6 Often the threat of Insolvency is sufficient to encourage payment, where bailiff action has failed as has the threat or issue of committal proceedings.
- 3.7. Bankruptcy proceedings have been used on 149 occasions since 1 April 2004. After the statutory debt has been served but prior to legal action taking place 25 out of 149 cases were paid in full, and another 19 paid after the initial court hearing. In 41 cases non-payers were made bankrupt by the court, 45 cases are ongoing and 19 cases were closed due to acceptable short term arrangements being made or in one case the debtor had recently died. I show below the increase in this work over the last three financial years;
2004/05 22 bankruptcy applications - 5 were made bankrupt.
2005/06 118 bankruptcy applications - 32 were made bankrupt.
2006/07 9 bankruptcy applications - 4 were made bankrupt.
A total of £298,193 has been paid to date. The total indebtedness covered by Insolvency proceedings is £710,567.
- 3.8. Shown below are three examples of bankruptcy proceedings:-
- a. Person A – £9,470 – 1998 -2005 Council Tax
Letter sent 22.9.03 explaining charge and payment requested.
Account passed to Bailiffs who were unable to collect. A letter was sent that committal to prison was being considered. No response was received Bankruptcy proceedings were instigated and the amount was paid in full before proceedings could be heard.
- b. Company B - £18,588 various properties Council Tax
The previous owner, a company with the same Director went into liquidation owing large Council Tax debts which were eventually written off. The Council issued winding up proceedings against the new company in respect of large Council Tax debts. The company was wound up via Insolvency proceedings and it is now likely that the debt will be paid in full once the company assets are liquidated.
- c. Person C - £6,545 1998-2005 Council Tax
Committal proceedings were instigated in 2001. Several arrangements were made and broken at the court hearings. A decision was made to withdraw committal proceedings and apply for bankruptcy. The original hearing was adjourned for payment and the account was paid in full before the hearing. The 2005-06 Council Tax went through the same process prior to payment.

3.9. These examples show that if this particular process is aimed correctly at debtors who have the means to pay it is a very useful.

4. FINANCIAL IMPLICATIONS

4.1 There are no specific implications arising directly from this report.

5. STAFFING IMPLICATIONS

5.1 There are no specific implications arising directly from this report.

6. EQUAL OPPORTUNITIES IMPLICATIONS

6.1 There are no specific implications arising directly from this report.

7. HUMAN RIGHTS IMPLICATIONS

7.1 The use of these recovery methods are monitored to ensure that the needs of the individual are considered prior to action being taken.

8. LOCAL AGENDA 21 IMPLICATIONS

8.1 There are no specific implications arising directly from this report.

9. COMMUNITY SAFETY IMPLICATIONS

9.1 There are no specific implications arising directly from this report.

10. PLANNING IMPLICATIONS

10.1 There are no specific implications arising directly from this report.

11. BACKGROUND PAPERS

11.1 None were used in the preparation of this report.

12. RECOMMENDATION

12.1 That the report be noted.

IAN COLEMAN
DIRECTOR OF FINANCE