

# **Insolvency and Charging Orders Policy**

## **Policy and Procedures**

### **Covering; Bankruptcy/Liquidation and Charging Orders**

#### **Legislation**

Local Government Finance Act 1992 Schedule 4 paragraph 9 (1) + 11 (1)

Statutory Instrument 1992 613 (49) (50)

Insolvency Act 1986

Insolvency Act 2000

Insolvency Act 2010

Land Registration Act 1925

Land Charges Act 1972

Charging Order Act 1979

Equality Act 2006

Equality Act 2010

#### **Background**

The case(s) for non-payment has to have been heard at Wirral Magistrates Court following a summons for non-payment. The summons allows an application for a Liability Order to be made and if granted by the courts the issue of the Liability Order enables the Council to collect the debt by a number of statutorily defined means. They are Attachment of Earnings/Members Allowances, Deduction from Income Support/Job Seekers Allowance/Pension Credits, Bailiffs (Distress), **Charging Orders, Insolvency** and Committal to Prison (Committal to Prison may only be considered after a failure to collect by Bailiffs.)

#### **INSOLVENCY POLICY**

Wirral is conscious that Insolvency can have a devastating effect on individuals and as such it is not considered lightly however it is felt that it is a preferred alternative to Committal to Prison, which is regarded as the last resort in the collection process. It is fair to say Insolvency is regarded as the second from last collection method.

## Process Map

It is essential that every stage in this process is followed and documented before the issue of a Pre-Bankruptcy letter is issued indicating the Council's intention to take proceedings.

- 1 The combined debt must be in excess of £2,000 (the legal requirement is £750.) If not then other alternatives must be attempted.
- 2 The debt must have been returned by the Bailiff as uncollectable and certified accordingly.
- 3 Has the customer been offered Fair Debt previously? (The answer will be yes to all cases prior to October 2007.) If no the process must stop and Fair Debt offered.
- 4 Has ownership of the property been confirmed with Land Registry?
- 5 If the answer to 4 is yes has a Charging order been considered? If yes and rejected review that decision and record the result of your review.
- 6 Is deduction from Income Support/Job Seekers allowance /Pension Credits viable? The current deduction 2011 is £3.40 per week, upgraded annually. It will take in excess of 11 years to discharge a £2,000 debt and in normal circumstances that is excessive however each case must be decided on its individual merits and the decision recorded.
- 7 Is an Attachment of Earnings viable? Each case must be decided on its individual merits and the decision recorded.
- 8 Is the debtor over 70 years or is the debtor infirm? Consider the impact of Insolvency and if action is to be continued record the basis of your decision.
- 9 Are there children resident belonging to the customer? Consider the impact of Insolvency and if action is to be continued record the basis of your decision.
- 10 Send a memo to Department of Adult Social Services to see if they have the customer in their care. If yes then seek further details and reconsider Insolvency as the way forward.
- 11 If there has been no contact with the customer within the previous 6 months send a District Representative to the last known address in an attempt to

establish contact.

12 The case must be reviewed under the Equalities Act 2006 and 2010 especially but not exclusively Section 15, 19 and 20 of the 2010 act when looking to utilise Insolvency to collect.

If after all the above has been completed and the decision of the Assistant Revenues Manager or the Court Officer is that Insolvency is the way forward a Pre-Bankruptcy letter is issued indicating the Council's intention to take Bankruptcy proceedings.

Letter is sent and offers Fair Debt if the debtor has not been informed of the Fair Debt scheme before and if applicable a form to claim Council Tax Benefit. If no response in 21 days later a reminder is issued.

A letter is issued in all cases to confirm the intention to seek Bankruptcy and indicates the costs incurred can reach up to £30,000.

If after 14 days there has been no contact and the debt remains outstanding then finally review items 1 to 11 above, checking for contact or payment and decide whether to proceed.

If yes, then the account is passed to Insolvency Practitioners (I.P.) to serve a Statutory Demand for Bankruptcy. The intention letter from the I.P. confirms the facts and supplies the contact details of four Independent Advice Associations including Citizen's Advice and the National Debtline.

If there is a failure to respond within 7 days then the details are referred back to the Council and a letter is sent reinforcing the action to be taken and giving a final 21 days to settle without incurring either any additional costs or the service of a Petition for Bankruptcy.

Before instructing the I.P. to serve the Statutory Demand and to petition for Bankruptcy the Council will check the following before proceeding

- 1 Any Contacts made?
- 2 Any payments made?
- 3 Any Payment proposals made?
- 4 The Pre petition letter was sent?

The Council will then instruct the I.P. to petition for Bankruptcy at the customer's local County Court. The hearing is normally heard in 8 to 12 weeks. At any time prior to the hearing the Council can agree to adjourn for settlement, normally for no longer than three months the customer can also agree to a voluntary charge on the property.

The I.P. must agree to seek officer permission for each advance in the process. An audit trail is required to be kept by the I.P.

## **LIQUIDATION**

Liquidation applies to companies and the majority are concerned with Business Rates. The process is identical to Bankruptcies but differs in one area of consideration that the affect on the employees must be taken into consideration when Petitioning for Liquidation and consultation should take place internally with the Strategic Development Section, Invest Wirral team.

## **CHARGING ORDERS**

This allows a charge to be placed upon a property and that property may not be disposed of without the charge plus interest being discharged.

### **Process Map**

- 1 The combined debt must be in excess of £1,000.
- 2 Has the customer been offered Fair Debt previously? (The answer will be yes to all cases prior to October 2007.) If no the process must stop and Fair Debt offered.
- 3 Is deduction from Income Support/Job Seekers allowance /Pension Credits viable? The current deduction 2011 is £3.40 per week, upgraded annually. It will take in excess of 5 years to discharge a £1,000 debt. Each case must be decided on its individual merits and the decision recorded.
- 4 Is an Attachment of Earnings viable? Each case must be decided on its individual merits and the decision recorded.
- 5 Is the debtor over 70 years or is the debtor infirm? Consider the impact of Charging Order and if action is to be continued record the basis of the decision.
- 6 Are there children resident belonging to the customer? Consider the impact of the Charging Order and if action is to be continued record the basis of the decision.
- 7 Check the owner details on the Land Registry, the owner and debtor must be the same person. The property subject to the charge may not necessarily be the property the debtor occupied whilst incurring the debt.

- 8 The case must be reviewed under the Equalities Act 2006 and 2010 especially but not exclusively Section 15, 19 and 20 of the 2010 act when looking to utilise Insolvency to collect.
- 9 Are there other charges held against the property?
- 10 Are there other debts owed to the Council that could join this process? Note these can only be included if the relevant orders are obtained.
- 11 Is it economically viable to seek to place another charge on the property, especially if the property is likely to be in negative equity or there are other charges?
- 12 Is it likely that the Council will look to force the sale of the property?
- 13 Is the debt increasing year by year?
- 14 If there has been no contact with the customer within the previous 6 months send a District Representative to the last known address in an attempt to establish contact

If after all the above has been completed and the decision of the Assistant Revenues Manager or the Court Officer is that a Charging Order is the way forward a Charging Order notification letter is issued indicating the Council's intention to apply for a Charging Order. The letter gives another 21 days to make payment or contact. If neither happens within 21 days the case is passed to the I.P.

The I.P. applies to the County Court for a Charging Order to be placed upon any beneficial interest held by the debtor in the relevant dwelling and for reasonable costs in obtaining the same.

There are two hearings; Interim Order normally to prevent disposal of a property and Final Order this order means the Council will be paid from the proceeds of the sale of the property, the charge will be shown on the Land Registry records. The customer may attend and make representations.

If the charging order is granted the Council then has the right to apply to the court for a hearing for an order for sale.

Last reviewed October 2011

Next review October 2012.