



Specialist Debt Advice Service Spotlight

November 2020

Shelter

Council tax enforcement and assisting clients with no recourse to public funds

We often receive enquiries from advisers asking whether a client with no recourse to public funds (NRPF) could still apply for a discretionary council tax reduction under Section 13A of the Local Government Finance Act 1992 (LGFA). This month's Spotlight will discuss the definition of 'public funds', what your client can do when faced with council tax enforcement and more.

What are public funds?

The [Government guidance](#) on Immigration Rules contains a definition of 'public funds' in the introduction. Unfortunately, this includes any assistance from the local authority under section 13A of the LGFA. This covers both the ordinary council tax reduction scheme and the discretion to reduce or write off any arrears.

Enforcement of council tax arrears

Where a client with NRPF has no income and cannot make an offer of repayment, it is worth writing to the Local Authority highlighting to them that the client cannot make a request under s13A LGFA and is also unable to make an offer of payment. Advisers should explain that no other enforcement methods would be appropriate either where a client has no funds from which they can be compelled to pay.

If the council pursues enforcement against a client who has no income and NRPF then it may be possible to make a formal complaint to the council. If the client does not receive a response within 8 weeks or if the client is not satisfied with their 'final response', the complaint could be escalated to the [Local Government and Social Care Ombudsman](#).

Where enforcement agents (EAs) have been instructed by the council, the '[Guidance to local councils on good practice in the collection of Council Tax arrears](#)' document focuses on debt adviser working with councils on the issue of council tax and EAs, and highlights that each local council should have clear policies to deal with vulnerable clients. In relation to a council withdrawing EA action, see paragraph 4.5, which states:

"Local Authorities should remain prepared to deal directly with individuals at any point. It is perfectly within their gift to call action back from the bailiffs at any time and where there is a case to do so they should consider such action."

Committal hearing for non-payment of council tax (England only)

As advisers may be aware, failure to deal with council tax arrears can ultimately result in clients being committed to prison. However, this should not happen in circumstances where a client is genuinely unable to pay and one of the reasons could be due to the client being subject to the NRPF condition. Page 227 of the CPAG Council Tax Handbook 12th Edition (CTH) confirms:

"If you cannot afford to pay on the day because you simply do not have enough money, the warrant should not be issued as the purpose of committal is coercive and not intended as a punishment or as a deterrent to other taxpayers."

If the council does proceed with a court hearing for non-payment of council tax, it is the court that will decide whether there has been 'wilful refusal' or 'culpable neglect' by the client in not paying the council tax pursuant to [Regulation 47](#) of The Council Tax (Administration and Enforcement) Regulations 1992. The client must attend the hearing to explain their full circumstances and to present a completed financial statement. If the council refuses to hold action, the client should mention this at the hearing.

If neither apply, they should consider writing off all or part of the debt. [Regulation 48](#) of the of The Council Tax (Administration and Enforcement) Regulations 1992 allows the court to remit the debt and this should be brought to their attention if there is no wilful refusal or culpable neglect. If the magistrates do not hold a proper means inquiry, the proceedings and subsequent warrant could be seen as unlawful.

If the court decides to imprison the client for non-payment of council tax, you can contact the [Centre for Criminal Appeals](#), as they may be able to assist in representing the client in appealing (which must be done within 21 days). Your client may also need to seek legal advice from a criminal solicitor if the client believes the court's decision to find the client guilty of wilful refusal or culpable neglect was incorrect.

Effect of council tax arrears on immigration status

It should be noted that the [Home Office Nationality: Good Character Requirement document](#) discusses non-payment of council tax on page 39. This may give some indication of the impact that the council tax arrears could have on applications for citizenship or leave to remain.

You can find an interesting discussion in the Adviser article '[The effect of debts on immigration and nationality applications](#)' written by the immigration solicitor John Donkersley of the Citizens Advice Expert Advice Team. The article explores which debts have special status in terms of immigration, and also considers the impact of various insolvency options for clients who may want to extend their leave and/or apply for citizenship, or who are acting as a sponsor. The article opens by considering what kind of advice can be given by advisers who are not qualified immigration specialists but who nevertheless will be advising clients whose debt options could impact their immigration status.

The Covid-19 Hardship Fund

Although clients with no recourse to public funds cannot apply for a discretionary reduction of liability under S13A LGFA, we would argue that they could instead apply to the Local Authority for assistance through the £500m [Covid-19 Hardship Fund](#). There is nothing in the [Local Authority Guidance](#) which suggests that the money would be classed as a public fund, and this was confirmed in a [Commons Select Committee](#) on 22 June 2020 (para 83). This stated:

“DWP have told us that the £500 million hardship fund is not listed as a public fund.”

The guidance for Local Authorities suggests that they should use the money to automatically reduce the council tax bill of any taxpayer who is already receiving help under the local council tax reduction scheme. Regardless of whether the taxpayer is directly affected by the pandemic, they should reduce the bill of all taxpayers in their reduction scheme by £150 (or for taxpayers who already pay less than £150, reduce the bill to nothing).

In addition, the guidance acknowledges that *“Councils may also want to use some funding to deliver increased financial assistance through other local support mechanisms, having considered local circumstances.”* This means that clients who are not eligible for the local reduction scheme or a discretionary reduction can still be assisted through the Covid-19 Hardship fund.

Councils should not operate blanket policies that would limit, or ‘fetter’, their discretion. It is therefore arguable that if a client who is subject to the NRPF condition applies for assistance under the Hardship Fund, the council should consider whether the power to use the fund in this way should be exercised in each case. Any failure to consider this properly could be a matter for the Ombudsman.