



STOCKPORT
METROPOLITAN BOROUGH COUNCIL

**CORPORATE DEBT RECOVERY
CODE
POLICY STATEMENT**

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CORPORATE DEBT RECOVERY CODE POLICY

STATEMENT

1. DEBT RECOVERY

1.1. INTRODUCTION

This document details Stockport Council's policy on the recovery of monies owed to the Council. The Debt Recovery Code of Practice Policy covers the Council's commitment to the collection of Council Tax, National Non Domestic Rates, and Sundry Debt Accounts (including Social Care Finance charges) . The collection of rents and debts related to housing is covered by the *Stockport Homes Rent Collection and Arrears Recovery Policy*, which can be found [here](#).

Sums due to the Council can be a mixture of statutory and non-statutory charges. The methods for billing and recovery of the statutory debts are prescribed by statute. Stockport Council takes into consideration both national legislation concerning the recovery of statutory charges, and principles of financial management to inform its approach to fair and responsible debt recovery.

Stockport Council operates a firm but fair recovery policy, and it is essential that residents and business owners pay all charges made by the Council in full and on time. The Council has a legal duty and responsibility to all residents of the Borough to ensure that income due is paid promptly. Effective income management processes are critical to the delivery of overall Council service objectives, and any money left uncollected has an impact on the Council's ability to deliver services.

1.2. AIMS OF THE POLICY

The aims of the corporate debt recovery policy are:

- To ensure money owed to the Council is collected in a timely but fair and ethical way
- To ensure that debtors are given access to the best advice available.
- To take into account individual circumstances and ability to pay to avoid financial hardship
- To provide a consistent approach to debt recovery across the Council for both personal debt and business debt

1.3. SCOPE OF THE POLICY

This policy applies to the collection of:

- Council Tax
- National Non-Domestic Rates (Business Rates / NNDR)
- Sundry Debt (Council Services)
- Overpayments of Housing Benefit
- Social Care Finance charges

1.4. STATUTORY BASIS FOR THE POLICY

The Council's Debt Recovery Policy complies with the following national legislation:

- Council Tax (Administration and Enforcement) Regulations 1992
- The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 2006
- The Housing Benefit Regulations 2006
- The Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006
- The Care Act (Care and Support Statutory Guidance, Department of Health, October 2014)

1.5. GENERAL PRINCIPLES OF RECOVERY

The Council will follow the principles outlined below:

- **Our actions will be proportionate , consistent and transparent:**
 - The level of debt will be considered before a Summons is issued or referred to an Enforcement Agent
 - A debtor's circumstances regarding their current expenditures and other debt repayments will be taken into account when making payment arrangements.
 - Customers will be advised about access to debt advice services such as the Money Advice Service (MAS), Stockport Debt Advice, and Citizens Advice.
 - The Council will always seek to make realistic arrangements to clear outstanding amounts by regular payments, in preference to taking legal action for recovery.
 - The initial intention of arrangements to pay will be to clear the debt as soon as possible and within the current financial year. Payment arrangements can be extended beyond the current financial year if the debtor's circumstances necessitate this. A financial statement can be requested to support a request for an arrangement which will run into the next financial year.

- All customers are initially requested to pay in accordance with the law and the timescale given on their bill. Where this is not complied with, a written reminder is sent.
- At all stages customers will be encouraged to discuss matters with the Council, to obtain independent advice and to claim any appropriate benefits such as Council Tax Support where relevant. They will also be made aware of the consequences of failing to keep to arrangements.
- Consideration will be given to the specific needs of customers in receipt of care and support services, which may involve discussions and action planning with family members, representatives or social workers if the customer is unable to manage their own affairs.
- Costs will be added to the debt in line the recovery action taken this is to reflect
 - Statutory costs applied by the Courts
 - Statutory Enforcement Fees applied by Enforcement Agents
 - Additional cost to the Council incurred as a result of pursuing the debt
- The customer will be told in advance about the costs and how much will be added to the debt if further recovery action is to be taken.

1.6. DEBT RECOVERY POLICY

- The Council will bill, collect and recover all debts in an economic and efficient matter in accordance with legislation and best practice.
- All bills will inform the customer about how much they owe the Council. The bill will also show when the outstanding balance or instalments need to be paid.
- Customers will be assisted in making arrangements to pay back their debt taking into consideration personal circumstances at all stages of the recovery process.
- In relation to Sundry Debt accrued through the provision of care and support services, the Council will consider the full range of options available to recover the debt. This could include the offer of a Deferred Payment Agreement, negotiating an agreement, advocacy, mediation or arbitration. Only when all other options have been exhausted will the Council consider making an application to the County Court.
- When a customer contacts the Council to ask for time for them to access financial advice a hold would normally be placed on recovery for a period of at least 21 days
- A summons to the Magistrates' Court will be issued if full payment has not been made in accordance with issued notices for Local Taxation debts.
- Debtors will continue to be supported to make arrangements to pay back their debt once they have received a Court summons provided they work with the Council and provide evidence of their income.
- If the debt is left unpaid following Court summons, an application will be made to the Magistrates Court to grant a Liability order.

- Following the grant of a Liability Order, the debtor will be given an opportunity to make a suitable payment arrangement. Should the debtor not make or keep to the agreed payment schedule, appropriate recovery action(s) will be taken dependent on the circumstances of each individual case.
- The Council will always prioritise direct deduction from benefits or attachment of earnings in preference to using Enforcement Agents.
- A debt will only be referred to an Enforcement Agent as a last resort when alternatives have been exhausted. The Enforcement Agent will not consider carrying out a visit for at least 30 days from receipt of the instruction. During this time they will issue a minimum of 3 letters and attempt contact by other means.

2. DEBT WRITE OFF POLICY

2.1. INTRODUCTION

The Council considers all due monies to be recoverable and all debts will be subject to the Councils recovery procedures. However, the Council also recognises that where it would be disproportionate to continue to attempt to collect a debt or where the probability of recovery is extremely low, prompt write off is good practice. The level and intensity of recovery action will vary depending on the debt. Each stage of the recovery process will increase the total cost of recovery and the Council must ensure the process is cost effective.

Consideration will be given the value of the debt before costs are added to ensure a proportional approach is taken, costs would not be added to a low value debt.

2.2. AIMS OF DEBT WRITE OFF

A write off policy is an essential part of an effective recovery strategy, and it helps to ensure:

- Proactive debt management
- Resources are targeted at arrears which have the greatest chance of being recovered to maximise the overall collection rate
- Effective and proportionate use of resources
- Aged debts are considered for write off where full accounting provision for non-recovery has already been made
- A balance is struck between protecting the Council's financial position and making sure anti-poverty issues are addressed.

2.3. CIRCUMSTANCES CONSIDERED FOR WRITE OFF

Debts will be considered for write off in the following circumstances or instances:

- Where the debtor has been declared bankrupt, or a business has been dissolved or liquidated
- Where the debtor's age, health, or social situation make it inappropriate to pursue the debt
- If the debtor is deceased
- Where a charging order has been successfully applied, but the sale of a property is not adequate to clear the debt
- Where it has been deemed by an Enforcement Agent that the debtor has no goods to sell
- Where the debtor cannot be traced after 12 months
- Where it is uneconomical to pursue small debts

- Where all other options have been considered and the debt is too old to pursue

2.4. WRITE-OFF POLICY

Debts will be written off in accordance with Part 4, of The Council Constitution (Financial Procedure Rules).

[http://democracy.stockport.gov.uk/ieListDocuments.aspx?CId=587&MId=22882&Ver=4
&Info=1](http://democracy.stockport.gov.uk/ieListDocuments.aspx?CId=587&MId=22882&Ver=4&Info=1)

3. INSOLVENCY AND CHARGING ORDERS POLICY

3.1. INTRODUCTION

The Council is committed to using the most effective recovery methods it has available. The Debt Recovery Policy will ensure that the use of either Insolvency or Charging Orders as methods of recovery is consistent and complies with the relevant legislation and best practice.

Insolvency frees a debtor from overwhelming debts so they can make a fresh start, subject to some restrictions, as well as making sure that the debtor's assets are shared out fairly among all the creditors. However, the consequences of insolvency can be severe sometimes involving the loss of the debtor's home or business as well as incurring considerable legal and administrative costs. The level of costs involved will reflect the complexity of the assets involved and the extent to which the debtor cooperates with the Trustee in Bankruptcy or Liquidator who will be administering the debtor's assets.

3.2. STATUTORY BASIS FOR THE POLICY

The Council's Insolvency and Charging Orders methods of recovery act in accordance with the Insolvency Act 1986 and the Care Act 2014.

3.3. LEGAL INFORMATION AND DEFINITIONS

3.3.1. DEFINITIONS

Where the debtor is an individual, bankruptcy proceedings would be used; where the debtor is a limited company, winding up proceedings would be used. The use of the word 'insolvency' is a general word to cover both types of action.

3.3.2. LEGAL INFORMATION: INSOLVENCY

- Bankruptcy and winding up proceedings can be taken against any debtor (individual or limited company) who owes in excess of £5,000.00 to a creditor and who, for whatever reason, is unable to pay his/her creditor's claims in full.
- Both Bankruptcy and Winding Up action takes place in the County Court.
- The Council will refer appropriate cases to the Council's Legal Services team who will commence legal action for recovery unless the facts of the case lead them to advise on an alternative course of action. Legal Services are fully authorised to commence insolvency action and conduct a case through to its conclusion. Legal Services are also fully authorised to deal with applications for Charging Orders, Orders for Sale,

Possession and any other contested matters that might arise.

3.3.3. LEGAL INFORMATION: CHARGING ORDERS

- Where the debtor owns a property, the Council can apply to secure any judgment obtained against that debtor by applying for a charging order against the debtor's interest in that property.
- Where the debt relates to unpaid Council Tax, then provided (a) that the total Council Tax debt is over £1,000 and (b) that the Council Tax relates to the debtor's property, then an application may be made for a Charging Order to be placed on that property to secure the debt owed to the Council.
- Charging Orders are not an appropriate method of enforcement where immediate recovery of the debt is required. The debt remains unpaid until the property is sold at which point the Charging Order is extinguished by the payment of the debt from the proceeds of sale. Any mortgage or charge registered with the Land Registry on a date before the registration of the Council's Charging Order would be paid first from the proceeds of sale.
- If there is little equity in the property, then the Council may recover little or none of the debt and will then need to look at alternative methods of recovering the balance of the debt
- Once the Council has protected the debt by registering a Charging Order on the property, then it has the option to apply to the Court for possession and an Order for Sale. This step would only be taken by the Council in exceptional circumstances as current policy is simply to allow the debt to be protected by registration against the property so that if the debtor decides to sell it at a future date, that it will recover the debt then.
- If the debt is to be actively pursued, then following the registration of the Charging Order, an application has to be made to the County Court for an Order of Possession and an Order for Sale.

3.4. USE OF INSOLVENCY PROCEEDINGS AS A MEANS OF RECOVERY

The Council will consider using insolvency proceedings as a means of recovery in the following circumstances (the list is not exhaustive):

- Where the debt exceeds £5,000.00 and the debtor has sufficient assets or equity to ensure the debt is recoverable by the Official Receiver/Trustee.
- Where the debtor is not making regular and mutually agreed payments that are sufficient to clear the accruing debt within an acceptable timescale.
- Where the debt is at least 12 months old.
- Where insolvency action is considered most effective in recovering from a particular debtor.

- Where specific assets cannot be identified but there are indicators that the debtor is one of high material worth e.g. renting high value property/has a high salaried profession.
- Where bankruptcy action would encourage payment from specific groups of debtors where their credit rating is important to them such as company directors or self-employed individuals or those needing finance.

3.5. USE OF CHARGING ORDERS AS A MEANS OF RECOVERY

The Council will consider using a Charging Order in the following circumstances (the list is not exhaustive):

- Where the debtor owns a property
- Where the debtor is not making regular and mutually agreed payments that are sufficient to clear the accruing debt and the arrears within an acceptable timescale
- Where the arrears is at least £1,000
- Where the debtor either has limited income or assets
- Where the property is currently for sale voluntarily and the debtor agrees to the Council securing the debt by Charging Order
- Where the property is owned by a debtor who resides outside the UK jurisdiction
- Where the debtor, as a result of age, severe mental illness or serious learning difficulties cannot deal with their affairs
- Where the debtor's whereabouts are unknown making service of bankruptcy papers difficult

3.6. INSOLVENCY POLICY

- The Council will ensure that the officer responsible for the case being considered for insolvency will seek to build a picture of the debtor and his/her circumstances to ensure that insolvency is appropriate, and to gain a fuller picture of the debtors financial and social situation.
- The Council will consider withdrawing the bankruptcy proceedings in favour of alternative action if it becomes aware of new information about a debtor after a statutory demand has been served - but prior to a Bankruptcy Order being obtained - that would have affected the decision making process to proceed with bankruptcy.
- The Council will follow a set procedure when it decided to refer a case for bankruptcy, to ensure that the Ombudsman's recommendations are followed.
- The Council will ensure that before bankruptcy action is approved, a case officer will have considered the file and have concluded that it is a fair and proportionate action.
- The Council will ensure that once the case officer has come to the decision that insolvency action is appropriate, that decision will be recorded in the Insolvency/Charging Order Referral Form, and then passed on to a senior officer for approval. The senior officer will be the Recovery Manager. Following approval by the Recovery Manager, the Referral Form will then be submitted to the Head of

Revenues & Benefits for final authorisation before being sent to Legal Services for action.

3.7. CHARGING ORDERS POLICY

- The Council will ensure that the officer responsible for the case being considered for a charging order will seek to build a picture of the debtor and his/her circumstances to ensure that insolvency is appropriate, and to gain a fuller picture of the debtors financial and social situation.
- The Council will ensure that the responsible case officer will first consider whether a case requires recovery action under the Policy by Charging Order. This process will involve the completion of the Insolvency/Charging Order Referral Form.
- The Council will ensure that once the Referral Form has been completed and the Charging Order process has been identified as being both fair and proportionate, then approval of that decision is required first from a senior officer, currently the Recovery Manager. Once authorised by the senior officer, then the case must be approved by the Head of Revenue and Benefits before it can be sent to Legal Services for action.