

## Appendix D

# Southend on Sea Revenues and Benefits Service Policy Document on the use of Insolvency (Bankruptcy) and Charging Orders 2013/14

### 1. Purpose of document

The Council is committed to using the most effective recovery methods available to it. This policy will ensure that the Council's use of insolvency to recover outstanding Council Tax, Non Domestic Rate and Housing Benefit Overpayments is consistent and complies with the relevant legislation and best practice.

### 2. Insolvency (Bankruptcy and Winding Up proceedings)

#### 2.1 Legal requirements

The legal requirements are contained within the Insolvency Act 1986. Essentially, bankruptcy action can be taken against any debtor who owes in excess of £750 to creditors and who, for whatever reason, is unable to satisfy his creditor's claims in full.

In addition, a debtor may initiate action by petitioning for their own bankruptcy.

Winding Up proceedings are used against Limited Companies.

Insolvency frees a debtor from overwhelming debts so they can make a fresh start, subject to some restrictions, and makes sure the assets belonging to the debtor are shared out fairly among all the creditors. However the consequences can be severe and can involve the loss of the debtor's home or business and considerable legal and

Trustee costs. The level of costs will reflect the complexity of the matters involved and the extent to which the debtor cooperates with the Trustee who is administering the estate.

Insolvency action takes place in the County Court or the High Court if the debtor resides in London.

#### 2.2 Use of solicitors to undertake this work

The Council will refer appropriate cases to a suitable Law Firm. The Company is fully authorised to deal with all matters connected with insolvency from the issue of the Statutory Demand to dealing with contested matters.

#### 2.3 The Council will consider using insolvency proceedings under the following circumstances (the list is not exhaustive):

- Where the debt exceeds £2,000 (or a lower limit of £750 in certain circumstances including where fraud is involved) and the debtor has sufficient assets or equity to ensure the debt is recoverable by the Official Receiver or the Trustee.
- Where the debtor is not making regular and mutually agreed payments that are sufficient to clear accruing debt and the arrears within an acceptable timescale.
- Where insolvency action is considered most effective in recovering from a particular debtor.
- Where the debt has arisen as a result of fraud.
- Where specific assets cannot be identified but there are indicators that the debtor is one of high material worth, for example renting high value property/or having a high salaried profession.
- Where bankruptcy action would encourage payment from specific groups of debtors where their credit rating is important to them, for example company

directors, self employed people and those people needing finance.

## **2.4 Special Circumstances.**

If made aware of the following circumstances prior to a Bankruptcy Order being obtained, the Council will consider withdrawing proceedings in favour of alternative enforcement action.

- Where a debtor, as a result of age, severe mental illness or serious learning difficulties cannot deal with their affairs.
- Where the debtor is currently in receipt of the maximum Council Tax Support with no accruing debt.

## **2.5 Decision Making**

The more information held about the debtor, the more efficient the decision making process will be in terms of selecting the most effective enforcement option. As part of the decision making process the Council officer will seek to build a picture of the debtor and their circumstances and will achieve this in various ways, including some or all of the following activities. The list is not exhaustive.

- Demanding financial information in writing following a Liability Order being granted whilst stating bankruptcy is an option to be considered.
- Warning of bankruptcy action and encouraging contact by the issue of a letter including a guidance booklet. The booklet "Guide to Bankruptcy" issued by the Insolvency Service fully details the effects of bankruptcy action, the alternatives to it, a glossary of terms and where to go for help and advice-See [www.insolvency.gov.uk](http://www.insolvency.gov.uk) where free copies are available to order.
- Checking all Council Tax records to see if there is any reason bankruptcy would not be appropriate as in Section 2.4.
- Checking with the Benefits Service to ensure that all Council Tax Benefit and Council Tax Support due to the debtor has been posted to the Council Tax account and that their records do not indicate that the debtor lies within the criteria mentioned in Section 2.4.
- Checking H.M. Land Registry to confirm property assets.
- Checking with a Credit Reference Agency for information on outgoings, requests for finance, mortgages and other financial information.
- Checking council house sales records to determine those recently acquiring assets.
- Checking known or potential employment details.
- Checking Benefit Overpayment records and Business Rates records (and including all debts in the bankruptcy action).
- Checking with Private Sector Housing contacts - see Section 3.3.
- Checking Companies House records for business information.
- Checking with Social Services in case the debtor is known to them and there is information to suggest insolvency is not an appropriate form of recovery action.
- Have regard to the Council's Equalities Policy to ensure action is appropriate given the debtor's individual circumstances
- Consider the implication of the potential costs of the recovery action in comparison to the size of the debt.
- Assess that the debtor has sufficient assets to clear the debt if insolvency is pursued.
- Assess that there is no realistic prospect of recovering the debt by other means in a reasonable timescale

- Consider whether the debtor's personal circumstances warrant them being protected from insolvency action.
- Make a personal visit by a member of the Revenues Team visit to attempt to make contact with debtor

## **2.6 Publicity**

When a Bankruptcy Order is granted, the administration of it lies with the Official Receiver (OR) or an Insolvency Practitioner (IP). The fact that the order has been granted is advertised in the London Gazette and in a local newspaper. The OR/IP will also notify other bodies such as local authorities, utility suppliers, land registry, National Savings and Investments etc. to give them an opportunity to submit claims of their own and to prevent the illegal disposal of assets.

## **3. Charging Orders**

### **3.1 Legal Requirements**

If the aggregated balance of debts for a property is over £1,000 then an application may be made for a Charge to be placed on the same property only, to secure the debt owed to the Council. Charging Orders are not a method of enforcement in that the debt remains unpaid until the property is sold and the Charge extinguished by the payment of the debt from the proceeds. The property may never be sold or not for a considerable time and if no further action is taken then the Charge will be extinguished after twelve years in any event. If the debt is to be actively recovered then following a Charging Order being obtained, an application has to be made to the Court for an Order of Possession and Order for sale.

### **3.2 Use of solicitors to undertake this work.**

The Council will refer appropriate cases to a suitable Law Firm. The Company is fully authorised to deal with all matters connected with applications for Charging Orders, Orders for Sale and Possession and contested matters.

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

- Where the property is currently for sale voluntarily and a Charging Order is used as a way of securing the debt by agreement with the Council.
- Where the property is owned by a debtor who resides outside UK jurisdiction.
- Where a 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 to allow bankruptcy action difficult.
- Where a payment arrangement has been agreed on the basis that the debt is secured via a Charging Order.
- Where there is Council Tax debt and a Charging Order is obtained to assist the Council's Private Sector Housing Enforced Sale Procedure to address the issue of urban blight caused by empty derelict properties.

### **3.4 Decision Making.**

The number of cases is very small. An officer and the Revenues Manager or Head of Revenues and Benefits will consider each case on its own merits being mindful of all the facts and the level of arrears.

#### 4. Management Checks

Prior to the insolvency contractor being instructed the Council's officer will complete the pro forma and obtain approval from the appropriate manager. The form is attached at Appendix 1 and explains how the decision to use bankruptcy/charging order has been arrived at.

#### 5. Policy Review

This procedure will be reviewed on an annual basis in order to ensure it remains valid, effective and relevant.

### Insolvency referral form

**S.B.C reference:**

#### 1. Debtor's details

Name:

Current address:

Date of birth: Age:

Phone Number:

#### 2. Relevant information from background checks:

**Council Tax information** *(please type inside the boxes)*

Engagement with Council Tax

Evidence of health issues (make contact with Social Services for info)

Employment status and details

Details of any joint and several liability

Details of why bankruptcy is being considered in this case. What other methods of recovery have been considered or used?

**Benefit information** *(please type inside the boxes)*

Benefit history including any CTB or CTS fraud

Current benefit entitlement

Version 1.5 – April 2013 7

#### To be completed by the Benefits Service

All Council Tax Benefit and Council Tax Support entitlement paid to Council Tax account?

*(to insert a tick in a box, place the cursor in the box first then hold down the "Alt" key and type 0252)*

Yes  No

Checked by: Date:

Position:

#### 3. Other Information on file

*(please type inside the boxes)*

*(to insert a tick in a box, place the cursor in the box first then hold down the "Alt" key and type 0252)*

Documents obtained by: Land Registry

Experian

Bankruptcy warning letter sent?

Yes  No  Date of issue:

Details of any known assets

Reasons for referring this case for bankruptcy

Referred by: Date:

Position:

Approved by: Date:

Position: Revenues Manager or Head of Revenues and Benefits

**4. Details of debt** *(please type inside the boxes)*

Property Address

Account reference

Provide details of any joint and several liability

**Liability period**

**Gross charge £ Less discount £ Less benefit/support £ Less payment £ Costs £ Balance £ Liability Order date**

Business Rates account reference

**Liability period**

**Gross charge £ Less discount £ Less benefit £ Less payment £ Costs £ Balance £ Liability Order date**

Overpayment of Housing Benefit reference

**Liability period**

**Gross charge £ Less discount £ Less benefit £ Less payment £ Costs £ Balance £ Liability Order date**

Total Debt: