

WOKING BOROUGH COUNCIL – BUSINESS RATES RECOVERY POLICY

1. PURPOSE OF THE POLICY

The purpose of this policy is to outline the steps that may be taken by the Council in order to recover unpaid business rates and empty rates, also known as (national) non-domestic rates. Business rates are charged on most non-domestic properties like shops, offices, pubs, warehouses, factories etc. Business rates will have to be paid if you use a building or part of a building for non-domestic purposes. Business rates are usually paid by the occupier but in some cases such as empty premises the owner or leaseholder may be liable.

The policy has been written to ensure that all rate payers in Woking are treated equally when recovery action is taken.

The policy outlines the statutory recovery process and the options available to the Council when considering enforcement action for unpaid business rates. Actions that can be taken can have serious consequences for an individual and/or company, and this policy outlines the steps that may be taken in considering the various options available, taking account of each individual circumstance.

2. RECOVERY PROCESS UP TO LIABILITY ORDER STAGE

2.1 Demand Notice

Demand notices are sent at least 14 days in advance of the start of the tax year (1st April). We also send out amended notices throughout the year where there have been changes to accounts.

2.2 Payments by Instalments

We offer a number of different payment methods and dates for business rates to be paid. Details can be found on the demand notice. It is essential these payments are received on or before their due date. If payments are not received on or before their due dates, recovery action may be taken.

2.3 Reminder Notices (Further Notice)

If payments are not made in accordance with the instalments, a reminder notice (also known as a further notice) will be issued. Reminder notices give seven days for payment of the overdue instalment to be made, in order to bring the account up to date. If payment has not been made after a further seven days (including any additional instalments which may have become due), the right to instalments will be lost, and the Council may apply to the Court for a liability order. If the overdue instalment is paid but a future instalment is missed, a further reminder notice may be issued.

2.4 Final Notices (Reminder Notice)

If a third instalment is missed, a final notice (also known as a reminder notice) may be issued. At this point, the right to instalments is lost and the remaining balance becomes immediately due in full. Failure to pay within seven days of the date of the reminder may

result in a summons being issued. A final notice may also be issued where a liable person has vacated the property and not paid their remaining balance.

A maximum of three reminders may be issued in a financial year; a maximum of two further notices and one final / reminder notice.

2.5 Summons

If the business rates payer fails to pay the amount shown on the reminder or final notice, a court summons may be issued. The summons gives details of the court hearing, including date, time and location. The costs of issuing the summons will be added to the debt when the summons is issued.

The business rates payer will be encouraged to contact the Council immediately to discuss their account, and if appropriate, a payment arrangement may be offered. If a payment arrangement is made before the hearing, the Council may still ask the Magistrates to grant a liability order to secure the debt. Providing the payment arrangement is maintained, no further recovery action will be taken.

If the amount including costs remains unpaid the Council may seek a liability order at the hearing. Where the court finds the debtor liable to pay, it may issue a liability order for the sum payable and costs reasonably incurred.

3. LIABILITY ORDER HEARING

At the court hearing, the Council must satisfy the Magistrates that we have followed the statutory recovery process detailed above. The Council must also confirm the debt remains outstanding and unpaid by the debtor. If the Magistrates are satisfied with the evidence presented, they must grant a liability order.

A liability order is a decision by the court confirming the debtor is liable to pay the business rates due, and has not done so in accordance with the law. The liability order gives the Council further powers of enforcement. In each case the Council will decide on the most appropriate course of enforcement action based on the size of the debt and the personal circumstances of the debtor. These options are explained in further detail in sections 4 and 5.

The debtor has the right to attend court to present their case. A liability order may not be granted if the debtor has a valid defence, such as:

- The council has not demanded the amount in accordance with the Regulations
- The debtor has paid the amount in full including costs
- The debtor is not the person liable for the business rates
- More than 6 years have passed since the council issued a bill for the amount

The list is not exhaustive.

A liability order gives the Council the power to recover the unpaid business rates using the methods listed in sections 4 and 5.

4.0 STEPS TAKEN TO RECOVER THE DEBT FOLLOWING A LIABILITY ORDER

The recovery options available are as follows:

4.1 Enforcement Agents (bailiffs)

The Council may instruct an enforcement agent to collect the outstanding business rates debt on the Council's behalf. This action may be considered appropriate if:

- A payment arrangement fails
- Other enforcement actions are not considered appropriate or have failed

The enforcement agent may agree a payment arrangement with the debtor, or take control of goods to be sold at auction to cover the debt.

The Taking Control of Goods procedure and fees are set out in legislation.

Enforcement agents must follow the Taking Control of Goods national standards issued by the Ministry of Justice. All enforcement agents employed by the Council are members of The Civil Enforcement Association (CIVEA), the principal trade association representing enforcement agencies.

4.2 Committal proceedings

An application can be made to the Magistrates Court to have a debtor committed to prison if enforcement agents have been unable to find any or sufficient goods to pay an outstanding debt. This option is only available if the business ratepayer is a sole trader or in partnership. The purpose of committal applications is to coerce payment, i.e. it can be used as a tool of collection. It should not be viewed as punitive i.e. a punishment.

A letter is issued to the debtor warning that committal action is to be taken. The Council will allow 14 days from the issue of the warning letter before issuing a committal summons. This will allow the debtor an opportunity to contact the Council and discuss the outstanding balance before a committal summons is issued.

If no agreement is reached to discharge the debt and the balance remains unpaid, a committal summons may be sent. This orders the debtor to attend the Magistrates Court for an enquiry in to their means and conduct, both currently and at the time of the debt falling due. This enquiry can only be conducted in the presence of the debtor, and if they fail to attend court a warrant for their arrest can be applied for and issued.

If the Magistrates court are satisfied that the council has complied with legislation and if they find the debtor has not paid through wilful refusal or culpable neglect they have the following options available to them:-

| Court Order with suspended sentence |
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| The debtor could be sentenced to a term of imprisonment but this sentence will be suspended provided they keep to the conditions of the suspension. This is usually an order to pay a set amount to clear the debt. If they fail to do what is ordered by the Magistrates Court the Council will apply for the debtor to be brought back to court for the prison sentence to be enforced. |

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| Court Order without a suspended sentence |
| The debtor could be ordered to pay a set amount. If the debtor does not keep up the payments, they are ordered to come to court again to explain why they have not paid. The Magistrates Court will then decide what to do next. The Council will apply for the order to be backed by a suspended sentence. |
| Remit (write off) all or some of the debt |
| The Magistrates Court can remit all or some of the business rates owed depending on the debtor's circumstances. If only some of the debt is written off, the Magistrates Court may make a Court Order for the remainder. |
| Take no action |
| The Magistrates Court may decide that no further action is required. |
| Adjournment |
| If more information or evidence is needed before a decision can be made, the case can be adjourned until a later date. |
| Committal to Prison |
| The Magistrates Court can decide to send the debtor to prison immediately for up to 90 days. |

4.4 Insolvency (winding up)

Where the debt remains unpaid and other methods to recover the debt have been unsuccessful or deemed inappropriate, the Council may apply for a Winding Up order to be issued in appropriate cases against a company, where the debt exceeds statutory limits. Directors of a company have responsibilities to ensure that the company does not continue to trade if it is insolvent.

Before insolvency action is commenced, a warning letter will be sent to the debtor giving them a last chance to pay before insolvency action starts.

If the full amount outstanding including costs is not paid or an acceptable arrangement agreed, the Council may proceed to present a Winding Up Petition against the debtor without further notice.

If the Court winds up the debtor's company, the Official Receiver or an Insolvency Practitioner will become liquidator of the company and powers of the directors of the company cease and the company will cease trade.

If winding up proceedings are commenced, this will incur further court fees and legal charges for preparing the case and attending court, thereby increasing the debt owed to the Council. These costs may be substantial.

4.5 Arrangements for Payment

Payment arrangements may be considered at any time of the proceedings.

Payment arrangements will be monitored on a regular basis and if payments are not made as agreed, further recovery action will be taken.

5. RECOVERY PROCESS THROUGH THE COUNTY COURT

5.1 What is a county court judgment

A county court judgment (known as a CCJ) is a type of court order that is registered against a person who fails to repay money they owe. A CCJ may also affect the debtors credit rating.

A letter before claim will be sent to the debtor before county court proceedings are issued with detail of the debts and what the consequences of this action are.

When a county court claim is issued for a debt this also include a court fee, solicitors costs and interest. These additional costs will be added to the outstanding debt.

The Council's legal team will charge solicitors costs at a fixed rate in line with the Civil Procedure Rules.

5.2 When county court action may be used

Where a Charging Order or Insolvency are considered to be the most appropriate action.

5.3 Authorisation

The case will be referred by the Revenues Recovery Manager to the Head of Democratic & Legal Services to issue a county court claim for the debt. Ultimately the Head of Democratic & Legal Services has authority to issue legal proceedings.

5.4 What action can be taken where a county court judgment remains unpaid

5.41 Orders for questioning

A court order is issued requiring the debtor to attend court to be questioned about their financial circumstances. The Court will ask the debtor about their income, outgoings, employment, property owned.

An order to attend court for questioning will incur a court fee. These additional costs will be added to the outstanding debt.

5.42 Charging Orders

If the debtor owns the business property, the Council may decide to apply to the County Court for a Charging Order to be placed on it. This is an Order that places a registered charge on the debtor's property to safeguard the Council's financial interest. The charge includes the debt, costs and interest granted by the court. The court will also charge a statutory fee, and the Council's solicitors may charge a fee for preparing the case and attending court. The charge is similar to a mortgage and affects your credit rating.

If a charging order is granted it gives the council two options:-

- recover the debt and interest from the proceeds of sale if the property is sold.
- the Council may ask the County Court to enforce its sale to recover the money owed.

The Council will consider whether there is sufficient equity in the property to pay the debt before contemplating this option.

6. WRITE OFFS

In certain circumstances a business rates debt may be considered for write off. A write off may be recommended in the following circumstances:

- Remission by the Court
- Imprisonment (committal)
- Bankruptcies, Insolvency, Dissolution
- Death of the ratepayer
- Debtor who cannot be traced
- Small balance and/or where the amount is uneconomical to collect

Please note this list is not exhaustive.

In each case, a write off will be recommended by an officer, and approved or declined by the appropriate officer or member, in accordance with delegated authority set out in the Council's constitution.

7. TRACING

If correspondence is returned to the Council or we become aware that the debtor has absconded, we will attempt to trace that person and/or company using internal and external systems. Where all such avenues have been unsuccessful and, where the value of the debt is cost effective to pursue, it may be referred to external private tracing agents.

8. VULNERABILITY

We recognise that certain groups of debtors may be vulnerable. Whilst not all debtors in these groups may be vulnerable, we will consider debtors individual circumstances where potential vulnerability is identified. Checks will be undertaken throughout the recovery process.

These groups may include, but are not restricted to:

- Pregnant women or recent parents
- Long term sickness, serious illness or frailty
- Elderly
- Physical disability
- People with learning difficulties or mental health problems
- Recent bereavements
- Severe financial difficulties and/or in receipt of benefits
- Debtors with communication difficulties
- Victims of domestic violence

Where we are aware that a person may be vulnerable we will adapt our business rates recovery procedures accordingly to minimise any hardship or distress.

We recognise that certain debt recovery options are not appropriate where a customer is identified as vulnerable, and we will act to personalise the action we take to reflect this.

9. HARDSHIP

If a debtor is experiencing considerable financial hardship, the council will look at their case on its own merits and may agree an extended payment arrangement. We will always expect the debtor to pay the current years' business rates plus an amount towards the arrears.

When dealing with unpaid business rates debts, officers will make every effort to ensure that those experiencing considerable financial hardship are advised to seek independent debt advice.