

Report to Cabinet

Charging Order and Insolvency Policy

Portfolio Holder: Councillor Abdul Jabbar MBE, Deputy Leader and Cabinet Member for Finance and Corporate Services

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Reason for Decision

To present an updated Charging Order and Insolvency Policy for Cabinet approval.

Executive Summary

This report sets out an updated policy for the use of Charging Orders and Insolvency to recover unpaid Council Tax, Business Rates (also known as Non-Domestic Rates), Housing Benefit Overpayments and Sundry Debt.

The report advises of:

- Legislative changes
- Details of the process for enforced sale
- Details of the process for determining the vulnerability of the debtor prior to taking action

Recommendations

It is recommended that the updated Charging Order and Insolvency Policy attached at Appendix 1 of the report is approved.

Charging Order and Insolvency Policy**1 Background**

- 1.1 The Council is responsible for the collection of Council Tax, Business Rates (also known as Non-Domestic Rates), Housing Benefit Overpayments, and Sundry Debts. The Unity Partnership Ltd. administers debt collection on behalf of the Council.
- 1.2 Most taxpayers and businesses in Oldham meet their local tax obligations as required. For those who do not engage with the Council to meet their liability, payments can be enforced using a range of methods including use of enforcement agents (formerly known as bailiffs), and deductions from earnings or benefits.
- 1.3 There are also instances where it is appropriate to recover arrears owed to the Council through other methods. In those instances, legislation provides that Authorities can seek alternative routes for recovering debts. These include Charging Orders and Insolvency proceedings. These methods are used principally when debtors have the means to pay, such as owning capital assets, but are refusing to engage with the Council to do so.
- 1.4 The law relating to Insolvency, both personal and corporate, is principally contained in the Insolvency Act 1986 and the Insolvency Rules 1986. Bankruptcy proceedings are taken against individuals and liquidation (or winding-up) proceedings are taken against Limited Companies.
- 1.5 Bankruptcy action can be taken against any debtor who owes in excess of £5,000 to creditors and who, for whatever reason, is unable to satisfy the creditor's claims in full. A debtor may also initiate action by petitioning for their own bankruptcy.
- 1.6 The Charging Order Act 1979 enables the Council to secure the value of debt owed by a debtor against equity in a property owned by the debtor through a County Court Judgement. This is known as a Charging Order. This means that the Council can recover money owed to it from the sale price of the property when it is sold, if there is enough equity to do so.
- 1.7 The Law of Property Act 1925 enables the Council to request that the Court enforces the sale of a property on which the Council has secured Charging Order(s). This is known as an Order for Sale or Enforced Sale. If this action is instigated, the Council may obtain possession of the property in order to sell it. The proceeds of the sale will be used to pay debts owed to the Council if there is enough equity to do so.
- 1.8 There is no legal requirement for the Council to have a policy regarding the use of Charging Orders and Insolvency Action. However, Local Government and Social Care Ombudsman decisions on cases involving the user of Bankruptcy make clear they expect Local Authorities to have a policy in place. This is specifically highlighted in the Manchester City Council Case (07B10432 FR) where the investigator determined that they 'consider it maladministration for an authority not

to have such a policy for the guidance of its staff in such an important area of public decisions’.

2 **Current Position**

- 2.1 The current Charging Order and Insolvency policy was introduced in November 2011 and now requires updating to reflect the most recent changes in legislation. The updated policy, set out at Appendix 1, reflects current legislative arrangements.
- 2.2 Most cases considered for Charging Order action relate to long term empty properties. Properties are deemed Long Term Empty if they are unoccupied and unfurnished for over two years. Long Term Empty properties are subject to a 100% Council Tax premium (200% Council Tax payable).
- 2.3 All cases considered for Charging Order and/or Insolvency Action are subject to approval by the Debt Recovery Panel. The Debt Recovery panel is a cross service Council panel who consider and approve enforcement action for proposed cases for Insolvency, Charging Order and Enforced Sale and consists of representatives from The Unity Partnership Ltd, Corporate Governance, Legal, and Finance.
- 2.4 It is important to consider vulnerability issues prior to taking Bankruptcy action or Order for Sale and this forms part of the decision-making process. The proposed policy sets out the procedure to be followed to check that vulnerability issues have been taken into account prior to considering action against the debtor. For cases where there may be potential vulnerability, a representative from the Adult Social Care service will be invited to attend the Debt Recovery Panel to provide advice and guidance to ensure that all matters are given due consideration with regard to a decision as to the appropriate course of action
- 2.5 Although Charging Orders secure the outstanding debt against equity in the property, the Council cannot recover the debt until the property is sold. In some cases, Charging Orders are applied for over many years, often against empty properties and Enforced Sale may be appropriate in these cases. The Council has identified properties for potential Enforced Sale; the properties initially identified are long term empty properties (for example, the owners of 2 long-term empty properties identified for this action have collective Council Tax arrears in excess of £40k). It is hoped that legal action taken to force the sale of these properties will result in payment of the arrears in full. This also aligns with the initiatives that the Council has approved to bring empty properties back into use and hence be re-occupied.
- 2.6 Any action taken to enforce sale to collect debt will be recommended by the Debt Recovery Panel and agreed with the Cabinet Member for Finance and Corporate Services before proceedings are begun. The proposed policy details the updated procedure for Enforced Sale.
- 2.6 It is important to note that the enforcement actions set out in this report will only apply to a small number of cases overall. The Council’s overarching approach to debt recovery is to encourage early payment and engagement with the debtor. It is only in cases where this approach fails and the debtor has the means to pay, that the Council will enforce payment of the debt.

3 Options/Alternatives

3.1 The following two options are available:

Option 1 - Do nothing

3.2 Members could choose to do nothing. In this case the Council would continue to use the Charging Order and Insolvency Policy approved by Cabinet in November 2011. However, the Council would likely face criticism from the Courts, debtors and the Local Government and Social Care Ombudsman for the continued use of an outdated policy and lack of clarity about the process for enforced sale and checking vulnerability issues.

Option 2 – Approve the Charging Order and Insolvency Policy

3.3 Members could choose to approve the revised Charging Order and Insolvency Policy as presented at Appendix 1. This would ensure that the practices adopted by the Council reflect and include:

- Legislative changes
- Details of the process for Enforced Sale
- Determining the vulnerability of the debtor prior to commencing action.

The updated policy will provide transparency for debtors, the Courts, and the Local Government and Social Care Ombudsman about the process followed by the Council in pursuing cases for Charging Order and Insolvency action.

4 Preferred Option

4.1 The preferred option is Option 2 – Approval of the proposed updated Charging Order and Insolvency Policy.

5 Consultation

5.1 During the review of the policy, feedback has been obtained from officers involved in the decision process across the relevant services.

5.2 As the report provides transparency on existing back office processes as opposed to introducing new procedures, it is considered that there would be no negative impact on residents or individuals and thus further or public consultation is not required.

6 Financial Implications

6.1 As outlined above, the enforcement actions set out within this report will be limited to a small number of cases. Whilst the updates to the Charging Order and Insolvency Policy are primarily aimed at creating greater transparency to the process, further benefits may include the potential faster realisation of recovery through enforced sales (where applicable) and general improved collection from an improved understanding of the process. (John Hoskins)

7 **Legal Services Comments**

- 7.1 It is important that all policies are as accurate as possible and reflect what the Council is intending to do. The fact that the November 2011 policy does not contain the recent legislative changes could render the Council susceptible to a Legal Challenge / criticism from the LGO. The policy would also need to reflect the intention of the Council to progress an Order for Sale through the court on the relevant properties. A failure to do so could again mean that we are acting in a way not in line with our policies and result in a legal challenge, criticism and / or reputational damage. (Alex Bougatef – Group lawyer- Litigation)

8. **Co-operative Agenda**

- 8.1 Not applicable

9 **Human Resources Comments**

- 9.1 Not applicable

10 **Risk Assessments**

- 10.1 The Council needs to ensure its Policies and Processes in place to support the collection of revenue it is owed reflect current legislation to minimise the risk of future legal challenge when on the occasions they are utilised to collect debts. (Mark Stenson)

11 **IT Implications**

- 11.1 Not applicable

12 **Property Implications**

- 12.1 Not applicable

13 **Procurement Implications**

- 13.1 Not applicable

14 **Environmental and Health & Safety Implications**

- 14.1 Not applicable

15 **Equality, community cohesion and crime implications**

- 15.1 Not applicable

16 **Equality Impact Assessment Completed?**

- 16.1 In taking financial decisions the Council must demonstrate that it has given “due regard” to the need to eliminate discrimination, promote equality of opportunity and promote good relations between different groups.

16.2 Demonstrating that “due regard” has been given involves:

- assessing the potential equality impacts of proposed decisions at an appropriate stage in the decision-making process - so that it informs the development of policy and is considered before a decision is taken;
- ensuring that decision makers are aware of the equality duties and any potential equality issues when making decisions.

NB – having due regard does not mean the Council cannot make decisions which have the potential to impact disproportionately, it means that we must be clear where this is the case and must be able to demonstrate that we have consulted, understood and mitigated the impact.

16.3 To ensure that the process of impact assessment is robust, it needs to:

- Be specific to each individual proposal
- Be clear about the purpose of the proposal
- Consider available evidence
- Include consultation and involvement with those affected by the decision, where appropriate
- Consider proposals for mitigating any negative impact on particular groups
- Set out arrangements for monitoring the actual impact of the proposal.

16.4 The Equality Act 2010 extends the public sector equality duties to cover eight protected characteristics, namely: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion and belief and sexual orientation.

16.5 There is no duty to undertake an equality impact assessment (EIA) but an EIA is recognised as a useful tool in performing and recording the duty to have due regard. Given the nature of the proposed change a stage one EIA review is considered adequate. This is attached for reference at Appendix 2.

17 **Key Decision**

17.1 Yes

18 **Key Decision Reference**

18.1 FCS-04-20

19 **Background Papers**

19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

File Ref:	Background papers are provided at Appendices 1-2
Officer Name:	Caroline Lee
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20 **Appendices**

Appendix 1 – Charging Order and Insolvency Policy
Appendix 2 – Equality Impact Assessment