

Charging Order and Insolvency Policy

Guidelines for the use of Charging Orders, Orders for Sale, and Insolvency for the recovery of unpaid Council Tax, Non-Domestic Rates, Housing Benefit Overpayments, and Sundry Debts.

March 2020

1 Introduction and Scope

- 1.1 This policy sets out the Council's approach to the use of Charging Orders, Orders for Sale, and Insolvency for the recovery of Council Tax, Business Rates (also known as National Non-Domestic Rates), Housing Benefit Overpayments and Sundry Debts.
- 1.2 The Council is committed to using the most effective recovery methods available to it. This policy will ensure use of Insolvency and Charging Order proceedings is consistent and complies with the relevant legislation and best practice.
- 1.3 The Unity Partnership Ltd (UPL) manages the collection and administration of Council Tax, Business Rates, Housing Benefit Overpayments and Sundry Debts on behalf of Oldham Council. This includes the administration of Charging Orders, Orders for Sale and Insolvency proceedings, although the final decision to pursue any one of these courses of action lies with the Council.

2 Insolvency (Personal and Corporate)

2.1 Legislative Framework

- 2.1.1 The law relating to Insolvency, both personal and corporate, is principally contained in the Insolvency Act 1986 and the Insolvency Rules 1986.
- 2.1.2 Bankruptcy proceedings are taken against individuals and liquidation (or winding-up) proceedings are taken against Limited Companies.
- 2.1.3 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 creditor's claims in full. A debtor may also initiate action by petitioning for their own bankruptcy.
- 2.1.4 Insolvency frees the debtor from overwhelming debts in order that 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 creditors. 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 reflects the complexity of the matters involved and the extent to which the customer co-operates with the Trustee who is administering the debt.
- 2.1.5 A winding up order is a Court Order that forces a company into compulsory liquidation – a process in which the Court appoints an Official Receiver to liquidate all of the company's assets in order to repay creditors. Winding Up proceedings can be taken against a limited company that owes in excess of £750 to creditors.

2.2 Use of solicitors to undertake Insolvency Proceedings

- 2.2.1 The Council may choose to use its in-house legal team or external solicitors to carry out Insolvency proceedings as appropriate. Solicitors acting on behalf the Council are authorised to deal with all matters connected with Insolvency from the issue of the statutory demand or winding up petition to dealing with contested matters. Insolvency action takes place in the County Court.

2.3 Use of Insolvency Action

2.3.1 The Council will consider using Insolvency proceedings under the following circumstances (this list is not exhaustive or limiting);

- Where the debt exceeds £5,000 and the debtor has sufficient assets or equity to ensure the debt is recoverable by the Official Receiver or 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 Insolvency 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.

2.3.2 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 (in such instances the Adult Social Care team will provide advice and guidance to ensure that all matters are given due consideration with regard to an appropriate course of action).
- Where the debtor is currently in receipt of the maximum Council Tax Reduction with no accruing debt.

2.4 Making a decision

2.4.1 The more information held about a debtor, the more efficient the process will be in terms of selecting the most effective enforcement option.

2.4.2 Prior to making a recommendation for Bankruptcy, the Council will attempt to build a picture of the debtor and their circumstances including overall arrears position, income and equity and previous payment history. This list is not exhaustive.

- For each alternative recovery method, the Council has set out in detail the reasons why other methods have been discounted;
- All Council records available have been checked to see if there is a reason why bankruptcy would not be appropriate;
- Information requests have been issued following the granting of each liability order.
- Confirmation the debtor has been warned in writing of potential bankruptcy action.
- That the debtor has been signposted to relevant advice services such as Citizen Advice or Stepchange debt charity.
- Benefit records have been checked, where applicable, to ensure maximum Council Tax Reduction entitlement has been awarded;
- An appropriate H.M. Land Registry check has been undertaken to confirm property assets;
- A recent credit check has been performed for information on expenditure and arrears outside Council records;
- A Companies House check, where applicable, has been for records of business information;

- For each case, the Adult Social Care team has been contacted to check whether there is a record held for the debtor (to determine vulnerability).
- 2.4.3 Information collated by the Council must be recorded against the debtor account, similarly it must be recorded where checks for information have been made and no information found. This is to ensure transparency and to evidence that the relevant necessary checks set out within this policy have been undertaken.
- 2.4.4 If the Council becomes aware of vulnerability issues that the debtor may be experiencing, enquiries must be fully exhausted to establish whether this is the case and evidenced in full. In such instances the Adult Social Care team will be asked will 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.
- 2.4.5 Any cases believed to be appropriate for Bankruptcy action will be presented to the Debt Recovery panel for a decision. (See section 4).
- 2.4.6 If the Council decides to pursue Bankruptcy action, the debtor must be issued with a copy of guidance compiled by the Insolvency Service. This must be issued prior to or with the relevant statutory demand.
- 2.4.7 An overview of the Bankruptcy and Winding Up process can be found at Annex A. However, it is recognised that these processes may vary in practice dependant on the circumstances of individual cases, and/or potential legal advice.

3 Charging Orders and Orders For Sale

3.1 Legislative Framework

- 3.1.1 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 sufficient equity to do so.
- 3.1.2 Once a Charging Order is granted, a record is held at HM Land Registry for 12 years. This can be removed at the discretion of the Council once the order has been settled in full. The record of the County Court Judgement remains on the debtor's credit record for a period of 6 years.
- 3.1.3 This means that Charging Orders are not considered a method of enforcement in that the debt remains unpaid until the property is sold, the debtor pays in full, or the expiration of the 12-year limit. As a result, the Council may be required to commence Enforced Sale proceedings to recover the monies owed.
- 3.1.4 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 sufficient equity to do so.

3.2 Use of solicitors to process Charging Orders and Orders For Sale

3.2.1 The Council may choose to use its in-house legal team or external solicitors to carry out this work as appropriate. Solicitors acting on behalf the Council are authorised to deal with all matters connected with obtaining Charging Orders, and Orders for Sale.

3.3 Making a decision (Charging Orders)

3.3.1 The more information held about a debtor, the more efficient the process will be in terms of selecting the most effective enforcement option.

3.3.2 The Council will consider obtaining a Charging Order in the following circumstances, (this list is not exhaustive or restrictive):

- If the aggregated balance on Council Tax liability orders exceeds £1,000.
- Where a 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 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.

3.3.3 Any cases believed to be appropriate for Charging Order action will be presented to the Debt Recovery panel for a decision. (See section 4)

3.3.4 In the event that the Council has good reason to believe that a property is about to be or has recently been put up for sale, the UPL Revenues Manager, in agreement with the Council's Exchequer Client Manager, may implement action to impose a Charging Order without waiting for the next meeting of the Debt Recovery Panel. This will be regarded as a special urgency decision and will be reported retrospectively to the Debt Recovery Panel at the next available meeting. This action will help to ensure that the Council uses every available opportunity to maximise efficient collection of Council debts.

3.4 Making a Decision (Order for Sale)

3.4.1 Enforced Sales Proceedings will be used only in exceptional circumstances, but the Council will be proactive in pursuing Orders for Sale where such action is in the best interests of Oldham's Council Taxpayers.

3.4.2 The Council will prioritise Order for Sale action against long term empty properties, which complements and aligns to the Councils policy and initiatives it is undertaking aimed at bringing empty property back into use. It should be noted that action is not restricted to long term empty properties and each case will be considered on its own merits and on a case by case basis.

3.4.3 The Council will consider pursuing an Order for Sale in the following circumstances (this list is not exhaustive or restrictive):

- For Council Tax debts, the aggregated balance on liability orders exceeds £5,000.
- There is enough equity in the property to pay debts in full, after all other financial obligations which take precedence over Council debts have been paid;

3.4.4 Prior to making a recommendation for an Order for Sale, the Council will attempt to build a picture of the debtor and their circumstances including overall arrears position, income and equity and previous payment history. This list is not exhaustive.

- For each alternative recovery method, the Council has set out in detail the reasons why other methods have been discounted;
- All Council records available have been checked to see if there is a reason why an Order for Sale would not be appropriate;
- Information about the Debtor's income and outgoings have been issued, received and considered following the granting of each Liability Order.
- Confirmation the debtor has been given notice in writing of potential Order for Sale action.
- That the debtor has been signposted to relevant advice services such as Citizen Advice or Stepchange debt charity.
- Benefit records have been checked, where applicable, to ensure maximum Council Tax Reduction entitlement has been awarded;
- A recent Credit check has been performed for information on expenditure and arrears outside Council records;
- A Companies House check, where applicable, has been carried out for records of business information;
- For each case, Adult Social Care team has been contacted to check whether there is a record held for the debtor (to determine vulnerability).

3.4.5 Information collated by the Council must be recorded against the debtor account, similarly it must be recorded where checks for information have been made and no information found. This is to ensure transparency and to evidence that the relevant necessary checks set out within this policy have been undertaken.

3.4.6 If the Council becomes aware of vulnerability issues that the debtor may be experiencing, enquiries must be fully exhausted to establish whether this is the case and evidenced in full. In such instances the Adult Social Care team will 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.

3.4.7 Any cases believed to be appropriate for Order for Sale action will be presented to the Debt Recovery panel for a decision. The final decision to proceed will be taken in consultation with Cabinet Member for Finance and Corporate Services. (See section 4).

3.4.8 An overview of the Order for Sale process can be found at Annex B. However, it is recognised that this process may vary in practice dependant on the circumstances of individual cases, and/or potential legal advice.

4 Debt Recovery Panel

4.1 The Debt Recovery Panel consists of nominated Council officers who convene to consider cases recommended for Insolvency proceedings Charging Orders, or Orders for Sale.

4.2 The UPL Revenues Manager or their delegated representative will make recommendations as to which debts should be considered for Charging Orders, Orders for Sale, or Insolvency proceedings, according to the criteria laid out in this policy.

4.3 This panel will consist of the following officers¹:-

¹ These titles are correct at the time of approving this policy

- Head of Revenues and Benefits (Chair)
- Head of Corporate Governance
- Exchequer Client Manager (Revenues)
- A senior representative of the Oldham Council Finance Division
- A senior representative of the Oldham Council Adult Social Care service (as required)

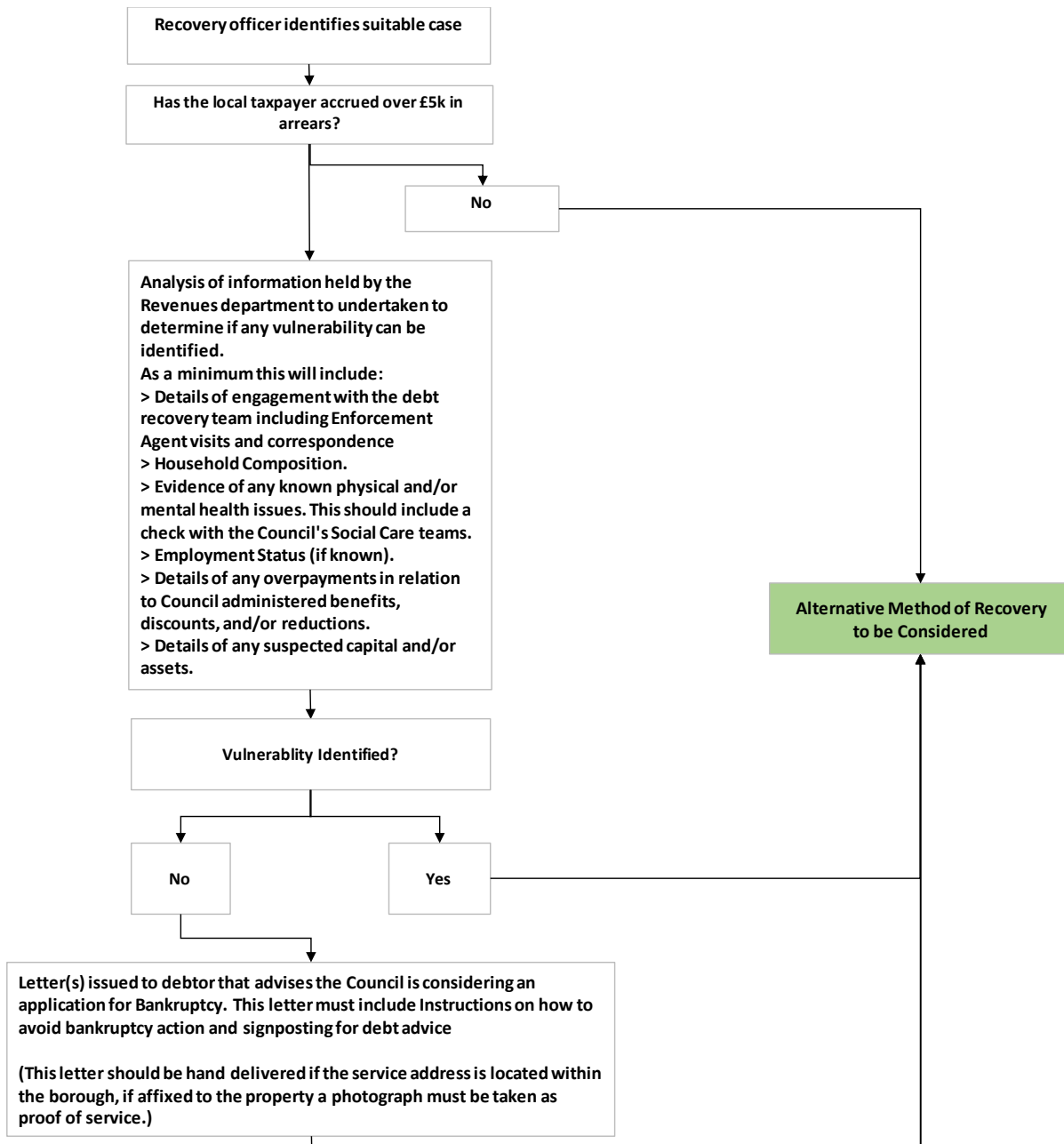
- 4.4 Additional officers or partners may be invited to attend the Debt Recovery Panel to offer evidence or provide explanation regarding the cases under review, but only the members of the Debt Recovery Panel can determine which course of action to take.
- 4.5 This panel will meet monthly to consider recommendations. The quorum for the Debt Recovery Panel is three members.
- 4.6 The Debt Recovery Panel can make decisions on a majority basis, where there is no majority the chair of the panel will have the final decision.
- 4.7 For cases where there may be potential vulnerability, the representative of 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.
- 4.8 If the Debt Recovery Panel agrees to seek a Charging Order, this action can be implemented without further consultation.
- 4.9 If the Panel approves the imposition of an Order for Sale or Insolvency Action, the Exchequer Client Manager (Revenues) or the Head of Revenues and Benefits will prepare a detailed report for the attention of the relevant Cabinet portfolio holder.
- 4.10 Should the panel disagree with a recommendation, the panel will advise the UPL Revenues Manager of the reasons why and the next steps the Panel recommends in terms of remedy.

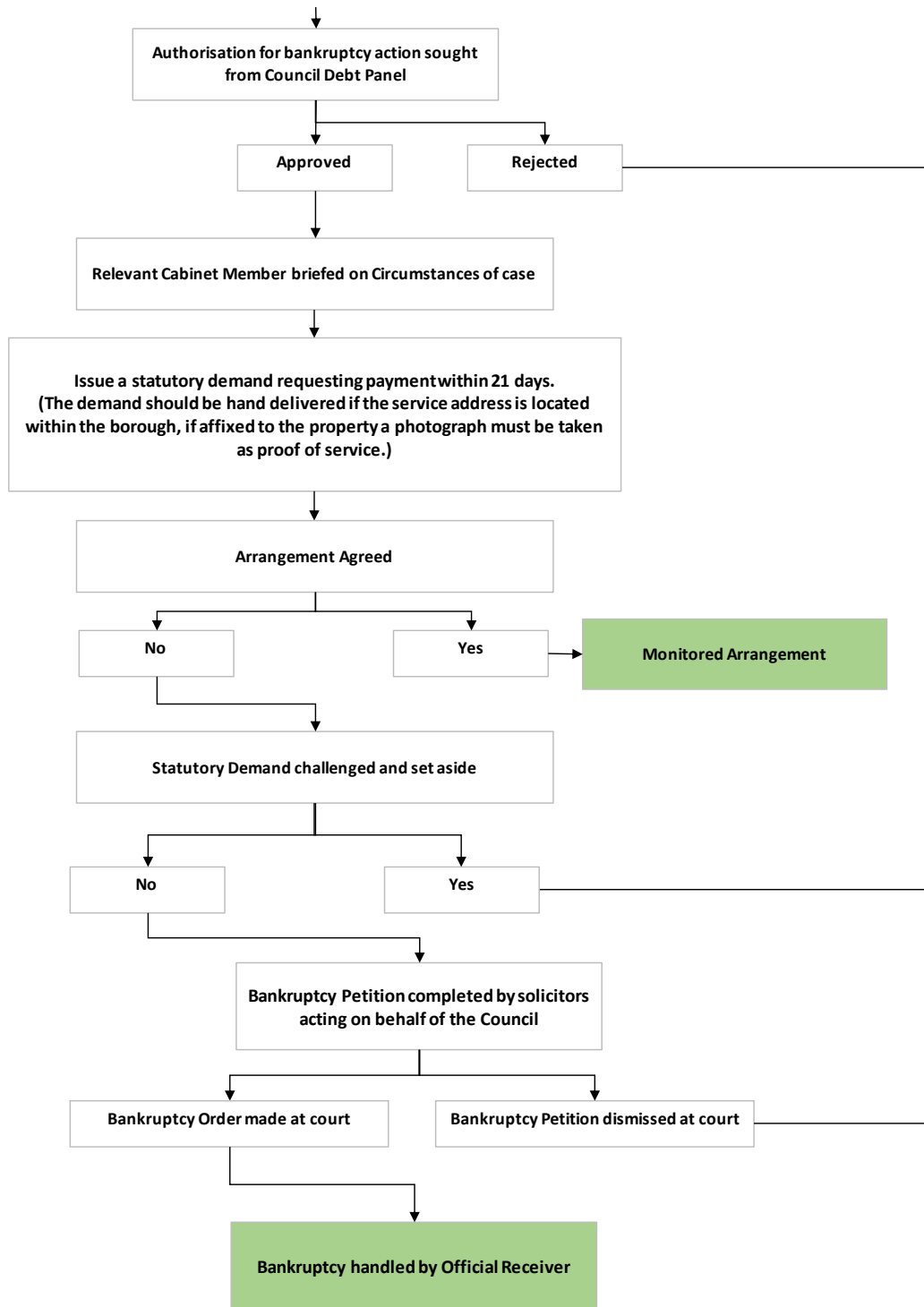
5 Policy Review

- 5.1 The Council reserves the right to review and revise the policy at any time as a result of information gained through operating the policy.
- 5.2 The Cabinet Member for Finance and Corporate Services in conjunction with the Director of Finance are authorised to agree any revisions to the policy.

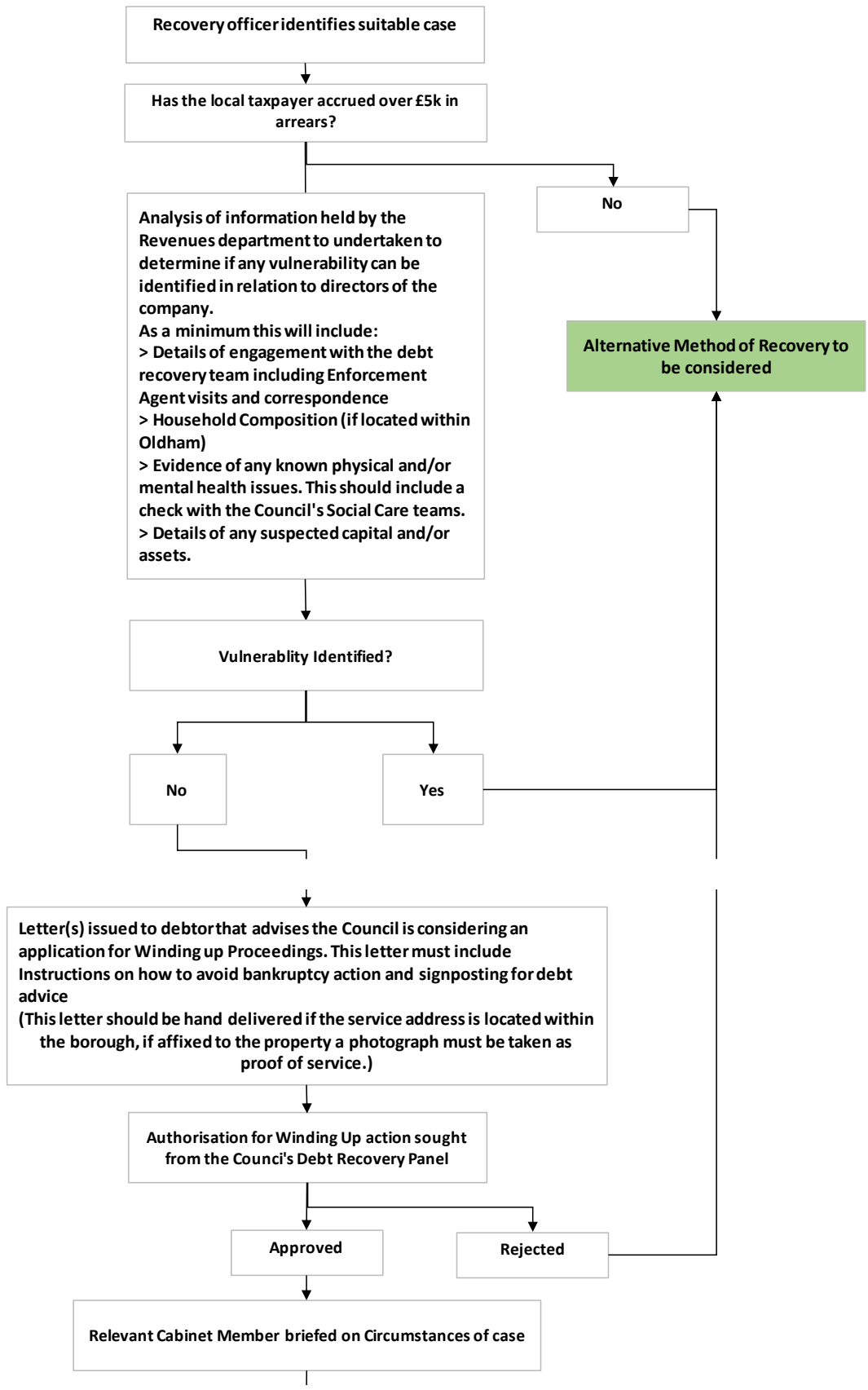
Annex A – Insolvency Action

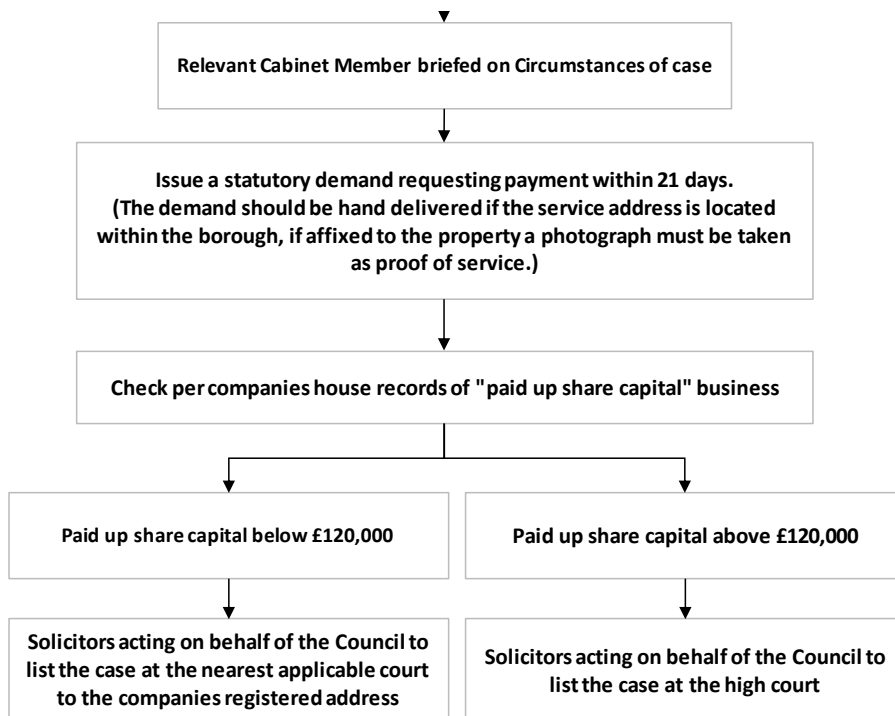
Bankruptcy Process



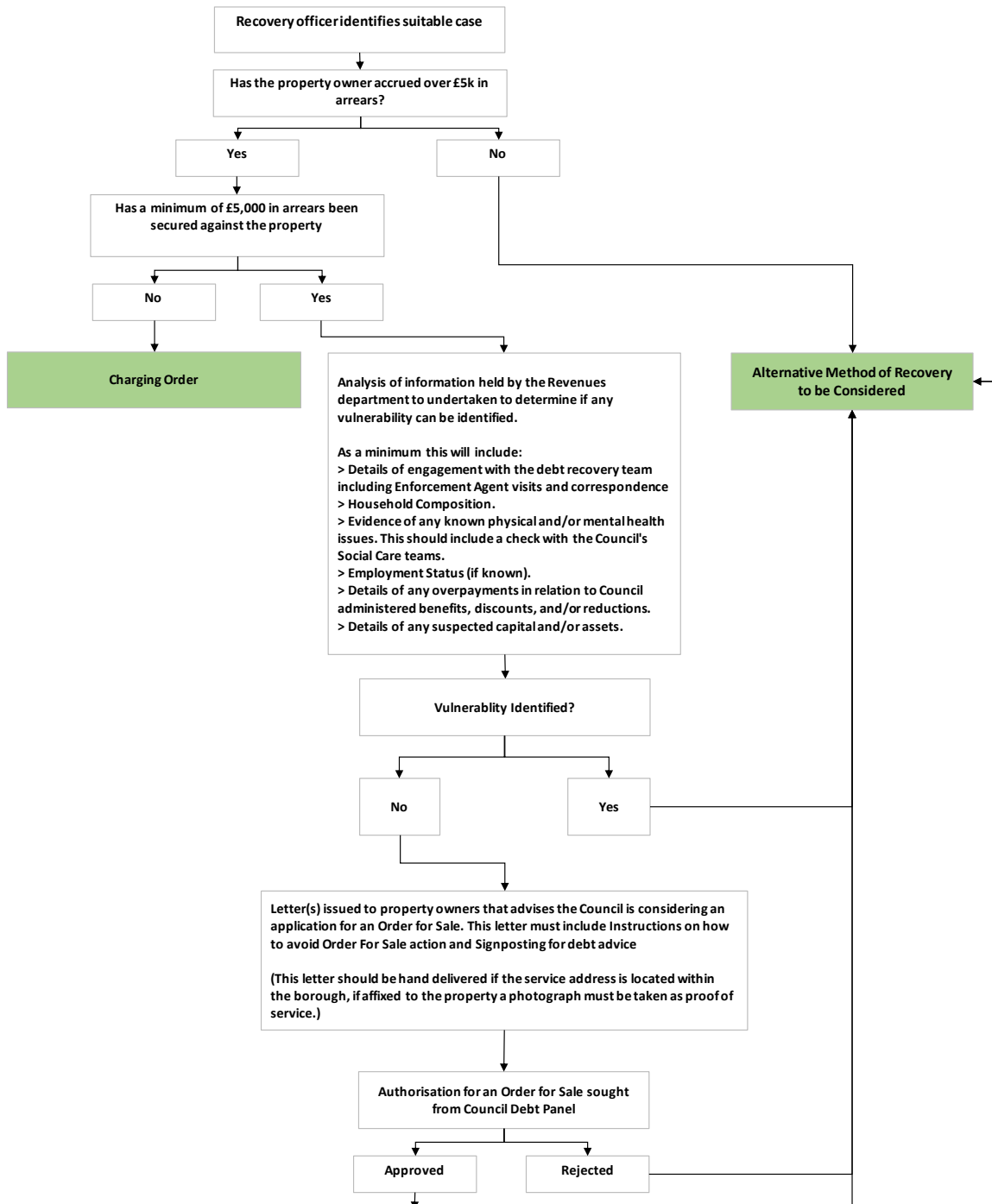


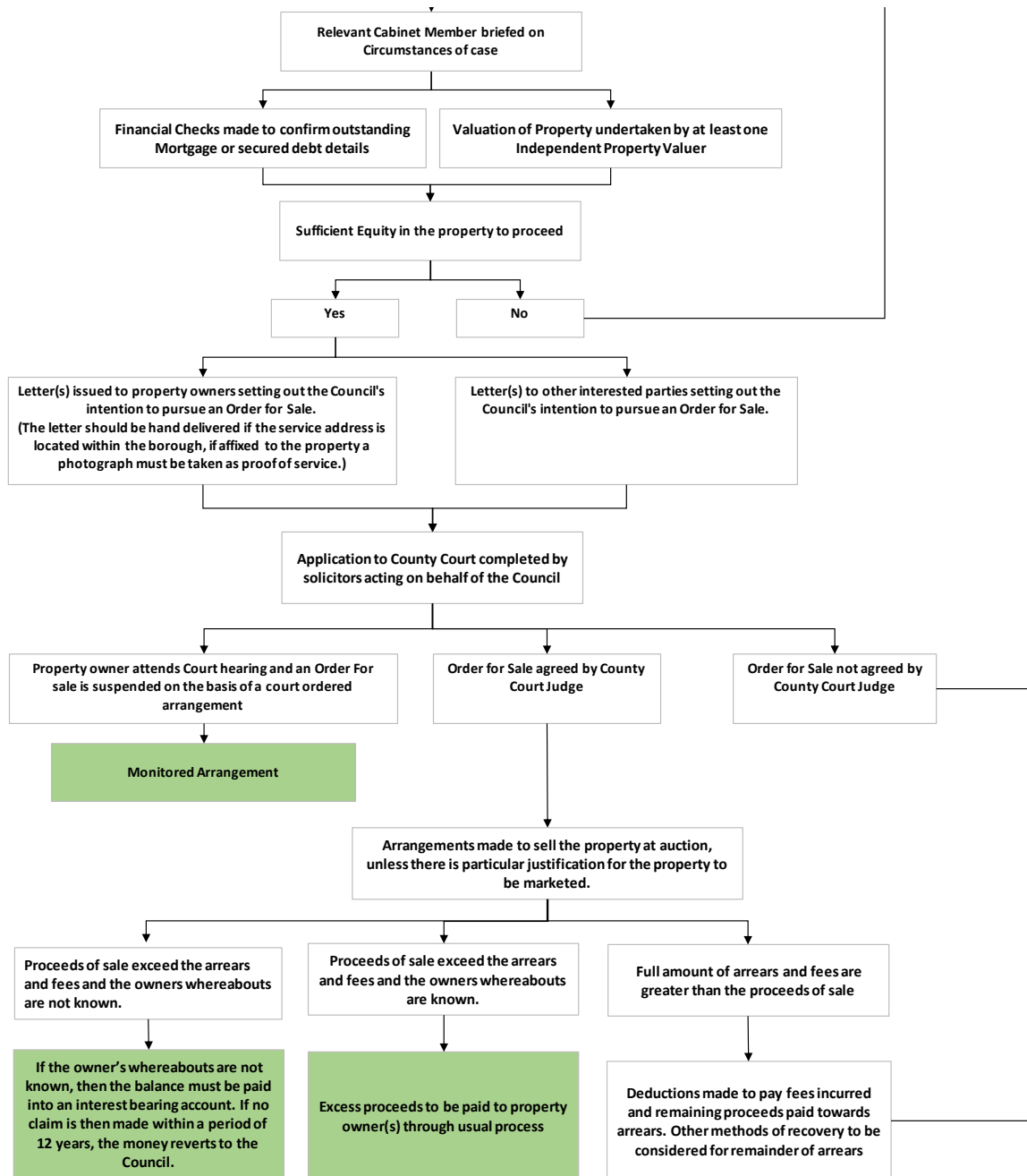
Winding Up Process





Annex B – Order for Sale Process





APPENDIX 2

Equality Impact Assessment

EIA Ref: Charging Order and Insolvency Policy

Lead Officer:	Caroline Lee
People involved in completing EIA:	Adam Parsey
Is this the first time that this project, policy or proposal has had an EIA carried out on it? If no, please state date of original and append to this document for information.	<p>The Charging Order and Insolvency Policy was first approved by Cabinet in November 2011.</p> <p>The proposed revised Charging Order and Insolvency Policy has been developed as a replacement of the original policy to consider changes due in legislation, and best practice as set out by relevant decisions made by the Local Government and Social Care Ombudsman.</p>

General Information

1a	Which service does this project, policy, or proposal relate to?	The Charging Order and Insolvency Policy
1b	What is the project, policy or proposal?	This policy sets out the Council's approach to the use of Charging Orders, Orders for Sale, and Insolvency for the recovery of Council Tax, Business Rates (also known as National Non-Domestic Rates), Housing Benefit Overpayments and Sundry Debts.
1c	What are the main aims of the project, policy or proposal?	This policy aims to ensure that the use of Charging Orders and Insolvency action to recover monies owed to the Council is consistent and complies with the relevant legislation and best practice.
1d	Who, potentially, could this project, policy or proposal have a detrimental effect on, or benefit, and how?	<p>This policy will benefit Council Officers by providing guidance on the use of Charging Orders and Insolvency.</p> <p>The Council has a statutory duty to collect local taxes and will enforce against debtors who choose not to pay but have the means to do so through capital and/or assets. publication of this policy allows the Council to be transparent with these residents on how Charging Orders and Insolvency action is used.</p>

1e. Does the project, policy or proposal have the potential to <u>disproportionately</u> impact on any of the following groups? If so, is the impact positive or negative?				
	None	Positive	Negative	Not sure
Disabled people	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Particular ethnic groups	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Men or women (include impacts due to pregnancy / maternity)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
People of particular sexual orientation/s	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
People who are proposing to undergo, are undergoing or have undergone a process or part of a process of gender reassignment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
People on low incomes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
People in particular age groups	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Groups with particular faiths and beliefs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are there any other groups that you think may be affected negatively or positively by this project, policy or proposal?				
		<input type="checkbox"/>	<input type="checkbox"/>	

1f. What do you think that the overall NEGATIVE impact on groups and communities will be?		None / Minimal	Significant
		<input checked="" type="checkbox"/>	<input type="checkbox"/>
		None	

1g	Using the screening and information in questions 1e and 1f, should a full assessment be carried out on the project, policy or proposal?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
1h	How have you come to this decision?	A small number of cases overall are subject to this type of recovery action. Vulnerability issues will be considered before action with the Adult Social Care team an essential element of such consideration. There are independent appeal processes available to those who dispute that arrears are owed.
1i	Review date	January 2021