

Report of	Meeting	Date
Director of Finance (Introduced by the Executive Member for Resources).	Executive Cabinet	25 th May 06

INTRODUCING BANKRUPTCY, CHARGING ORDER AND WINDING UP PROCEEDINGS

PURPOSE OF REPORT

- To seek approval to introduce bankruptcy, charging order and winding up proceedings to recover unpaid Council Tax, Business Rates and other large debts owed to the Council.

CORPORATE PRIORITIES

- By introducing these new recovery methods the Council will maximise the income that is due; potentially improve Best Value Performance Indicators 9 and 10; and satisfy (performance) priority outcome 6.4 'An excellent Council that is continually striving to improve'.

RISK ISSUES

- The issue raised and recommendations made in this report involve risk considerations in the following categories:

Strategy		Information	
Reputation	√	Regulatory/Legal	√
Financial	√	Operational	√
People		Other	

BACKGROUND

- The Council Tax Administration and Enforcement regulations 1992 and Local Government Finance Act 1988 (NNDR regulations) set out a variety of recovery methods to collect Local Taxation arrears. These methods begin by obtaining a Liability Order from the Magistrates' Court. A Liability Order for non payment of Council Tax powers the billing authority to:
 - Insist that a debtor supplies information regarding their employment or benefit details. Those failing to supply this information are prosecuted for committing a criminal offence which can result in a fine and costs.
 - Set up an attachment or earnings or deductions from certain benefits such as income support or job seekers allowance.
 - Instruct a bailiff to levy distress (remove goods) to cover the debt.
 - Summons debtor to court for committal to prison 'for wilful refusal or culpable neglect.'

- Instigate bankruptcy, charging order and winding up proceedings in the County Court.
5. At the moment debt recovery action ends after the committal stage. Over recent years committal cases have become less effective. The police no longer deal with warrants of arrest and magistrates' decisions are inconsistent and largely unsympathetic to the billing authority.
 6. Within the borough there are a relatively small number of Council Tax and Business Rates debtors that refuse to pay their dues. The recovery methods in use are unsuitable for this hardcore because of their circumstances such as being self-employed or unemployed and not claiming relevant benefits. These cases are not suitable for attachments of earnings or deductions from benefit and the individuals do not attend court hearings or co-operate with bailiffs and warrants officers.
 7. Powers already exist in Local Taxation legislation to take bankruptcy proceedings against a debtor who owes more than £750 and similarly apply for a charging order against a debtor who owes more than £1,000. A debtor would be unwise to ignore these methods of recovery, which can ultimately mean their homes can be sold to cover their debt.
 8. In adopting this approach there is a risk to the Council. It is hoped that debtors will take legal advice and settle their arrears in full prior to proceedings reaching the County Court. Indeed other authorities have experienced good results in collecting payment in full before the hearing. An article in a recent collections publication cites 80% payment in full as a reasonable collection rate for a local authority that initiates bankruptcy proceedings. A real life case study of a north west unitary Council has a collection rate nearer 50% with the number of cases reaching full bankruptcy running at 25%. Either way, the process will bring closure to the debt and force an outcome of payment in full or full bankruptcy.

BANKRUPTCY COSTS

9. The costs for bankruptcy are largely fixed and can total £1,017.00 for a full bankruptcy (including the service of documents). Where payment is made in full prior to bankruptcy the costs are paid by the debtor and this is clearly the best outcome. Where a case progresses to full bankruptcy the costs are paid from the assets before any debts are discharged. The worst case scenario is if a case reaches full bankruptcy and there are no assets. CBC would then stand the costs but the risk is minimised by careful selection of cases and taking a long-term view of the overall success rates.
10. Mindful of the potential cost, all cases would be selected very carefully after vetting them via Land Registry Direct and Experian Credit Reference Agency. It is also intended to start with a small pilot batch to measure success and utilise bankruptcies rather than charging orders and winding up orders in the first instance. There is an opportunity to publicise in the local newspaper our intention to use these recovery methods and follow up with details of early cases that progress to full bankruptcy. This will act as a deterrent to other would be non-payers and show our intent to collect all Local Taxation that is due.
11. Failure to take this positive action may hinder our ability to improve on our Council Tax and Business Rates collection rates. Indeed this improvement will go some way to help achieve challenging Best Value Performance Indicators (BVPI 9 – the percentage of Council Tax collected for the current year of 98.6% and BVP10 – the percentage of Business Rates collected for the current year of 99.0%).

SCOPE OF CASES

12. Early investigation shows that there is a minimum of 15 Council Tax cases suitable for bankruptcy proceedings. The value of the individual 15 cases range from £970.88 to £5,923.99, totalling £45,779.33. A hardcore of six renowned problematic cases are ready immediately and include a male pensioner that refuses to pay his Council Tax and has been committed to prison on three previous occasions for non payment. The total value of the six cases is £20,575.68. The intention is to treat the first six as a test batch to measure the success rate and benefit from any lessons learned. Of course the results of the test will be reviewed on the basis of a cost/benefit analysis before any additional cases are issued for bankruptcy proceedings.

COMMENTS OF THE HEAD OF HUMAN RESOURCES

13. There are no HR implications associated with this report.

RECOMMENDATION

14. It is recommended that approval is given to introduce bankruptcy, charging order and winding up proceedings and publicity is released to a local newspaper as outlined in this report.

REASONS FOR RECOMMENDATION (If the recommendations are accepted)

15. To maximise income due to the Council using the full powers available by tackling non-payers in a manner that is fair to others that pay their dues on time.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

16. There are no alternative options to be considered.

GARY HALL
DIRECTOR OF FINANCE

Report Author	Ext	Date	Doc ID
Mike Harkins	5740	09 May 06	Bankruptcy proceedings