

## **APPENDIX E – Enforcement Options**

### **(1) Attachment of Earnings**

The Council can order the debtor's employer to make deductions from the debtor's wages or salary. The deductions are sent directly to the Council until the debt is cleared. The employer has no choice but to comply, as it is an offence to ignore the attachment order. They must tell the debtor each time a deduction is made but may also charge the debtor £1.00 each time a deduction is made to cover their own costs. The money is taken weekly, fortnightly or monthly (in accordance with the debtor's pay) and is deducted at a percentage rate in line with the amount the debtor earns.

### **(2) Deductions from benefits**

The Council can ask the Department for Work and Pensions to make deductions directly from a person's Universal Credit, Income Support, Jobseekers Allowance or Employment Support Allowance. The money deducted is sent to the Council each month and continues until the Council Tax is paid in full, or the benefit entitlement stops. A person must inform the Council within two weeks of any changes in their benefit entitlement.

### **(3) Bailiff action**

The Council can instruct bailiffs to collect the outstanding debt from a person.

The Council's bailiffs are certificated through the County Court and abide to a Code of Practice. The bailiff company will write to the debtor first. If the debtor makes payment to them in full or makes and keeps to an arrangement with them, then no further costs will be added other than a small charge for card payments.

When the bailiff visits the debtor, they ask for full payment and will add visit costs. If the debtor cannot pay the amount due in full immediately, the bailiff may agree a payment arrangement. This is covered by a 'walking possession' agreement. This is where the bailiff records an inventory of goods that can be sold to repay the debt if the debtor does not keep to his/her arrangement. The debtor will be asked to sign the walking possession agreement. Additional fees will be added to the debtor's bill for this action. Providing the debtor pays as arranged, there are no further costs. If the debtor's goods are subject to a walking possession agreement, the debtor cannot move or dispose of them without the bailiff's permission. If the debtor fails to pay as arranged and has signed a walking possession agreement, the bailiff may re-enter the debtor's property, using force if necessary, to take the goods listed on the inventory. The debtor is charged for their removal and sale.

If the bailiff believes that the debtor may intentionally dispose of his/her goods, they may take 'close possession' of them. This means that the bailiff remains in the debtor's property until the debt is paid or the goods removed by the bailiff. Additional costs are added to the debtor's bill. The bailiff may visit the debtor's property to enforce the liability order by removing goods. If a van is used, additional costs are added to the debtor's bill.

### **(4) Possession proceedings**

This is available for the non-payment of rent or service charge. The first step will be to serve the tenant with a 'Notice of Intent to Seek Possession', (Notice of Seeking Possession if the debtor is a secure tenant, a Notice of Proceedings for Possession if the debtor is an introductory tenant or a Notice to Quit if the debtor holds a temporary tenancy).

This notice tells the debtor how much rent the debtor owes and that the Council may apply to the County Court for a Possession Order after 28 days. If there has been no payment from the debtor, the Council will apply for a Hearing date. At the hearing, the Court may agree to give the Council an outright possession order. This usually means 28 days after the court hearing, the debtor will have to leave their home. If the debtor does not leave, the Council will request the court's bailiff to evict the debtor.

## **(5) Bankruptcy action**

The Council may decide to take insolvency action against the debtor if the total debt owed to the Council is more than £750. If the court declares a debtor bankrupt he/she could lose their home and possessions to pay the debts and have to pay significant additional costs on top of the debt that is owed to the Council. The Council will send the debtor a letter warning of bankruptcy proceedings and give him/her a last chance to pay before bankruptcy action starts.

If the Council does not make an agreed payment, a 'Statutory Demand' is served on the debtor. This is the first formal stage in a process that may lead to bankruptcy. If the debtor does not agree a payment arrangement after the service of a Statutory Demand, or if the court does not set the case aside, the Council will then serve the debtor with a bankruptcy petition.

## **(6) Charging Orders**

If the debtor owns a property, the Council may decide to apply for a Charging Order to be placed on it. This is similar to a mortgage and means the Council can recover outstanding debt from the proceeds of sale if the property is sold at a later date. Once the Charging Order has been granted against a property, the Council can ask the court for an order to evict the debtor and enforce the property's sale to recover the money the debtor owes the Council from the proceeds.

## **(7) Committal proceedings**

The Council may take committal proceedings against a debtor if they do not try to clear their debt. This means the debtor could go to prison for the non-payment of debt owed to the Council. If the bailiffs have been unable to remove goods to pay for the debt, or if the Council thinks other recovery options are inappropriate, the Council can ask the Magistrates' Court to send the debtor a summons to attend a committal hearing. This means that the Council can ask the Magistrates' Court to decide whether to send the debtor to prison for not paying monies owed to the Council.

At the hearing, the Council's representative will confirm to the Magistrates' Court that a Liability Order has been granted and that the bailiffs have either been unsuccessful in removing the debtor's goods or the debtor does not have goods of sufficient value to clear the debt. The Magistrates' Court then asks the debtor the reason they have not paid the debt owed to the Council and decides whether the debtor has failed to pay due to 'wilful refusal' or 'culpable neglect'. The Magistrates' Court asks the debtor questions about their income and expenditure. This is called a 'means enquiry'. It helps the court decide whether the debtor have been guilty of wilful refusal or culpable neglect.

There are several decisions the Magistrates' Court can make:

### **(a) Court order with suspended sentence**

The debtor can be sentenced to a term of imprisonment but this sentence will be suspended provided the debtor keeps to the conditions of the suspension. This is usually an order to pay a set amount to clear the debts. If the debtor fails 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.

### **(b) 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, he/she is 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.

### **(c) Committal to prison**

The Magistrates' Court can decide to send the debtor to prison immediately for up to 90 days.

If the debtor does not appear in court, the Council asks the Magistrates' Court to issue a warrant for arrest with bail. This means that a Warrant Officer can arrest the debtor and bail them to appear in court at a later date. If the debtor does not appear at court after being bailed, the Council asks the Magistrates Court to issue a warrant for the debtor's arrest without bail. In this case, a Warrant Officer can arrest the debtor and take the debtor to police custody or straight to the Magistrates' Court to appear in front of the District Judge.

### **Deduction from Member's allowances**

This option only applies to elected Members. If a Councillor has not paid their Council Tax, up to 40% of their allowances can be claimed to clear the debt.