

Policy and Resources Committee**28 September 2016**

Is the final decision on the recommendations in this report to be made at this meeting?

Yes**Petition on Council Tax Enforcement**

Final Decision-Maker	Policy and Resources Committee
Lead Head of Service	Sheila Coburn, Interim Head of Revenues and Benefits
Lead Officer and Report Author	Estelle Culligan, Deputy Head of the Legal Partnership
Classification	Public
Wards affected	All

This report makes the following recommendations to this Committee:

1. That the Committee notes the petition.
2. That the Committee notes the procedures in place currently to enforce unpaid council tax.
3. That the Committee takes no further action on the petition.

This report relates to the following corporate priorities:

- Keeping Maidstone Borough an attractive place for all
- Securing a successful economy for Maidstone Borough

Timetable

Meeting	Date
Policy and Resources Committee	28 September 2016

Petition on Council Tax Enforcement

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Mr Jon Hicks of 44 Plains Avenue, Maidstone, presented a petition to the Council dated 8 September 2016. The petition is headed "Councillor Scrutiny of Council Tax Enforcement". The petition is signed by 183 local residents.
 - 1.2 In summary, the petition requires the Council to amend its procedures for enforcing unpaid council tax. Further details are set out below.
 - 1.3 The Council's Constitution requires the relevant committee or – if appropriate – full Council, to consider any petition which contains more than 100 signatures of people resident in the Borough (part 3.1 section 12 of the Constitution). Policy and Resources has strategic oversight of the Council's policies on council tax, therefore it is appropriate for this committee to consider the petition.
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2. INTRODUCTION AND BACKGROUND

- 2.1 The wording of the petition is as follows:
- 2.2 "We the undersigned petition the Council that any solicitors, currently or previously instructed to enforce council tax must be scrutinised by Councillors and to prohibit the use of external solicitors for the enforcement of council tax.

That only current up to date insolvency prescribed forms shall be submitted for bankruptcy proceedings. That no council tax sum of money submitted to the council's automated system can be re-allocated to a previous already secured amount without your customers express written consent. That a prior warning in plain view must placed onto the council's automated system.

That no council officer without written consent can instigate charging orders or insolvency bankruptcy proceedings on behalf of the council, when notified prior to or afterwards, that the sum paid is to reduce the amount to below either the charging order amount or bankruptcy threshold, because it is always assumed that the money applies to a unsecured not a securitised amount.

We demand that all previous orders obtained by the council without the above due process of law being followed including proper service of current insolvency documents by external solicitor's firms and their agents must be quashed or annulled with immediate effect."

2.3 Council Procedures

The Council follows the procedures set out in the Council Tax (Administration and Enforcement) Regulations 1992 in order to collect council tax and to deal with non payment. In summary, when a resident misses an instalment, the Council sends a reminder notice requiring payment within 7 days. Following a reminder, a 2nd reminder and/or a final notice will be issued if a resident does not bring his/her instalments up to date or fails to pay further instalments. Depending on the individual's circumstances (e.g. whether they are in genuine difficulty and are in contact with the Revenues team or are simply refusing to pay or to engage), the team may allow more time for an individual to set up an arrangement and to clear a debt. If there is genuine need and/or vulnerability, the team may correspond with the resident over a period of weeks or months before taking formal enforcement action.

- 2.4 Once the team decides to enforce the debt, it will issue a summons to the resident before applying for a liability order through the magistrates' court. Following issue of court proceedings, at any point up to and including making the liability order, the resident is able to pay the outstanding debt and the reasonable costs of the proceedings as shown on the summons. If the individual pays in full before the liability order is made, the court will not make the order. If paid in full, including all costs, after the order is made, the debt and the order are satisfied and the Council takes no further action.
- 2.5 Following receipt of a liability order, the Council may pursue a number of options to enforce the debt. These options include applying for an attachment of earnings order against the individual, a charging order (subject to the debt being £1,000 or more) or a bankruptcy order (subject to the debt being £5,000 or more). Regulation 49 of the regulations specifically allows for the use of bankruptcy proceedings to enforce the debt. Regulation 49(1) states "Where a liability order has been made and the debtor against whom it was made is an individual, the amount due shall be deemed to be a debt for the purposes of section 267 of the Insolvency Act 1986 (grounds of creditor's petition).
- 2.6 Regulation 50 of the regulations specifically allows the Council to apply for a charging order to enforce the debt. A charging order is an order against property which normally secures a debt. When the property is sold or re-mortgaged, the debt is normally paid off, as long as there are sufficient funds from the sale/re-mortgage. A charging order does not guarantee payment in circumstances such as repossession of the property or if there is insufficient equity Regulation 50 (1) allows an application to court where:
 - "(b) the amount mentioned in regulation 34(7) (a) or 36A (5) (a) in respect of which the liability order was made, or, where more than one liability order was made, the aggregate of the amounts mentioned in regulation 34(7) (a) or 36A (5) (a) in respect of which each such liability order was made, is an amount the debtor is liable to pay under Part V; and
 - (c) at the time that the application under this regulation is made at least £1000 of the amount in respect of which the liability order was made, or, where

more than one liability order was made, the aggregate of the amounts in respect of which those liability orders were made, remains outstanding.”

- 2.7 The Revenues team would usually pursue a charging order to secure the debt when they have considered all other avenues of obtaining payment, the debt has been outstanding for a period of time and it is more than £1,000. The team would usually only start bankruptcy proceedings against a resident after the charging order is made but further debts accrue or where the resident will not pay the council tax due. If the team suspects the resident is a vulnerable person, they will also speak to social services before pursuing the debt. Legislation states that a creditor cannot start bankruptcy proceedings for any debt less than £5,000. (this threshold was raised from £750 on 1 October 2015).
- 2.8 Although the Revenues team normally applies for a charging order before applying for a bankruptcy order against an individual, there are certain circumstances where the team might apply for bankruptcy as the only means of formal enforcement. This includes circumstances where there is a large and/or accruing debt which, despite the team’s best efforts, is not paid and the team feels there is refusal to pay or little likelihood of it being paid. Bankruptcy can only be used when the resident owns property. The team also has to consider that, although a charging order secures the debt, the debt remains unpaid until the property is sold or re-mortgaged and in certain circumstances, the debt may not be paid at all.
- 2.9 Use of Solicitors**
- 2.10 For all new charging orders, the Revenues team instructs the Council’s internal legal team. However, for bankruptcy proceedings, as there is no expertise in house – and proceedings can be time consuming – the team instructs external solicitors, J E Baring and Co. If the Council were to decide to prohibit the use of external solicitors, unless extra resource is put into employing extra legal staff with the appropriate expertise, it would be very difficult to deliver this work in house.
- 2.11 Application of payments to prior debts**
- 2.12 There can be cases where an individual has several outstanding council tax debts, going back over years, and comprising various amounts. If an individual pays an amount which matches a particular amount of arrears, or the current payment due, the software system automatically applies the payment against that particular debt to clear it. However, if an individual pays a random amount, the software system will automatically apply it to the longest standing arrears. In this way, the earliest debt for the Council is cleared or reduced.
- 2.13 The software system will apply payments to the earliest debt in time, even if this debt is secured by a charging order. This reduces the charge secured against the individual’s property. The Council has no obligation to apply amounts to a later unsecured debt simply to reduce the amount outstanding to below the threshold required to apply for a further charging order or for bankruptcy.

2.14 Court forms and appropriate venues for proceedings

2.15 The Revenues team and the internal and external solicitors always use the most up to date court forms for any court proceedings. There was an argument raised recently in Maidstone County Court that the proceedings should have been heard in the High Court. However, the District Judge confirmed that the form was correct and that cases can be heard either in the High Court or County Court (according to particular circumstances) and that it was appropriate for the Council to have brought this case in the County Court.

3 AVAILABLE OPTIONS

- 3.1 Part 3.1 section 12 of the Constitution states that the committee will consider and debate the petition having received a report on the issues.
 - 3.2 The Committee may simply note the petition and the contents of this report, which explains the Council's procedures on the issues raised by the petition, and agree to take no further action.
 - 3.3 The Committee may decide to accept the recommendations in the petition. However, the proposals in the petition limit the Council's ability to enforce payment of council tax. This would result in an increase in arrears of council tax which the council has a statutory duty to collect not only for Maidstone Borough Council, but for Kent County Council, Kent Police and Kent Fire and Rescue.
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4 PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 The recommendations in paragraph 3.2 and set out at the beginning of this report under "Recommendations" are the preferred option.
 - 4.2 This report aims to clarify and explain the legislative and procedural background to the action which the Council takes to enforce payment of council tax.
 - 4.3 Any changes to the current procedures would be both contrary to current legislation and would seriously limit the Council's ability to secure and/or collect council tax debts.
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5 CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Payment of Council Tax is a statutory duty on all residents of the Borough. It is a fundamental part of the Council's income which enables the Council to continue to serve the local residents. All council tax debt increases the burden on those residents who do pay council tax.	Deputy Head of Legal Partnership
Risk Management	If the proposals in the petition are accepted, there is a risk that the Council will be limited in its ability to enforce payment of council tax which it does on behalf of the precepting authorities mentioned in 3.3	Head of Revenues and Benefits
Financial	The Officer report describes the Council's processes for collection of council tax, which are efficient and comply with the relevant regulations. Introducing further processes, as set out in the petition, would risk a reduction in efficiency and a lower collection rate, with no corresponding benefit to council tax payers either individually or collectively.	Section 151 Officer & Finance Team
Legal	The legal implications are set out in the body of the report	Deputy Head of Legal Partnership

6 REPORT APPENDICES

6.1 There are no appendices attached to this report.
