





The content

Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

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Magistrates' courts have two distinct roles in relation to the collection of council tax. These are to decide whether to:

- issue a liability order (see here); *or*
- commit someone to prison (see here).

Liability orders

Issuing an order

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Setting aside a liability order

Issuing an order

The local authority can request that the court issue a liability order against a client. This states that an amount of tax is due from the client, that they have not paid it and that they are therefore liable.

Note: a local authority cannot apply for a liability order after a period of six years has elapsed, beginning with the date on which the tax became due.

The client's duty to pay council tax does not arise until the demand notice (ie, the bill) is served. ¹ Demand notices should be served 'as soon as practicable' after the date on which the local authority first sets the amount of council tax for the year in question. However, if a bill is sent late, this does not automatically invalidate it – the client must establish that they have experienced substantial 'prejudice' as a result. ²

The client is summonsed to attend a hearing. The summons must be served at least 14 days before the hearing date. The summons is properly served by:

- delivering it to the client; *or*
- leaving it at the client's usual or last known address; *or*
- posting it to the client's usual or last known address; *or*
- leaving it at, or posting it to, an address given by the client as an address at which service of the summons will be accepted.

This means that the client does not necessarily have to actually receive the summons. ³

Failure by the local authority to follow the rules on billing and reminder notices can be raised as a defence at the hearing, as can the fact that the bill has been paid. However, issues concerning the client's liability for, or exemption from, council tax cannot be raised at the hearing, but must be dealt with through the appropriate appeals procedure, although the court usually adjourns the

hearing if an appeal is pending. ⁴

If the client is disputing liability, consider appealing to a valuation tribunal. This hears appeals about banding, liability, entitlement to a discount, a reduction or exemption, and how the amount of council tax due has been calculated. The valuation tribunal cannot consider wider issues, such as whether the local authority sent the council tax bill at the correct time. ⁵ Before they can appeal to the valuation tribunal, the client must serve a notice in writing on the local authority stating the matter that is in dispute and their grounds for disputing it. The local authority should serve its response within two months. If the client is dissatisfied with the response, they must appeal to the valuation tribunal within two months of the date of service of the local authority's response. If the local authority has not served its response after a period of two months has elapsed from service of the client's notice, the client must appeal to the valuation tribunal within a further two months – ie, within four months of the date of service of the client's notice. The valuation tribunal can admit a late appeal when it is satisfied the client's failure to appeal in time 'has arisen as a result of circumstances beyond their control'. ⁶ In Complaint against High Peak Borough Council (23 010 819) the Local Government and Social Care Ombudsman ruled that the council was at fault in not advising Ms N that she could appeal a decision refusing her Council Tax exemption. Further, the council was at fault in not advising her that she could apply for discretionary relief. ⁷

If the client has claimed council tax reduction and their claim has not yet been decided, or an appeal is pending, the magistrates can adjourn the matter. ⁸ However, the Local Government and Social Care Ombudsman has repeatedly found local authorities guilty of maladministration in cases in which council tax arrears wholly or mainly arose as a result of their failure to determine council tax benefit (the predecessor to council tax reduction) claims and when the client had provided the information requested or a reasonable excuse for any delay, and can be expected to follow the same line in cases involving council tax reduction. ⁹

If payment is made after the liability order has been applied for, the local authority can ask for an order for payment of its reasonable costs incurred up to the date of payment. In England, there is no cap on these costs; in Wales, the costs cannot exceed £70. The High Court has recently decided that local authorities cannot require payment of the the costs of actually obtaining a liability order at the summons stage on the basis that, if the debt was paid in full before the date of the hearing, no liability order would be made. ¹⁰ **Note:** the issue is not whether the costs themselves are reasonable but whether the local authority has reasonably incurred those costs in the process of the recovery action taken to date. The client is entitled to be informed what costs are included in the sum claimed and how it was calculated. ¹¹ The magistrates cannot be asked to allow time to pay at this stage.

- 1 Reg 34(3) CT(AE) Regs; *Regentford Ltd v Thanet DC* [2004] EWHC 246 (Admin)
- 2 Reg 19(1) CT(AE) Regs; *Regentford Ltd v Thanet DC* [2004] EWHC 246 (Admin); *North Somerset DC v Honda Motors and Others* [2010] EWHC 1505 (QBD)
- 3 Reg 35(2) and (2A) CT(AE) Regs
- 4 Reg 57 CT(AE) Regs; *Wiltshire Council v Piggin* [2014] EWHC 4386 (Admin), paras 28-29
- 5 *Hardy v Sefton MBC* [2006] EWHC 1928 (Admin)
- 6 s16 LGFA 1992; reg 21 Valuation Tribunal England (Council Tax and Rating Appeals) (Procedure) Regs 2009. There are corresponding Regulations for Valuation Tribunals in Wales.
- 7 Decision no. 23 010 819
- 8 *SC v East Riding of Yorkshire Council*; *CW v East Riding of Yorkshire Council*, Valuation Tribunal for England 27 May 2015 (*Adviser* 164 abstracts; *Arian* 49 caselaw update) confirms that the valuation tribunal can consider the merits of a refusal of discretionary reduction and not just the procedural aspects of the decision-making process
- 9 For a more detailed discussion of the role of the Local Government and Social Care Ombudsman, see A Hobley, 'Local taxation and bailiffs', *Adviser* 129
- 10 Regs 34(5)(b), (7) and (8) CT(AE) Regs; *R (on the application of Morley) v Surrey Heath BC* [2025] EWHC 1678 (Admin)
- 11 *R (on the application of Rev Paul Nicolson) v Tottenham Magistrates and Haringey LBC* [2015] EWHC 1252 (Admin). See also, J Winters, 'Council tax liability orders: the price of non-payment' in the 'Spotlight section of Shelter's SDAS ebulletin, January 2024

After the liability order is made

A liability order allows the local authority to pursue collection of the debt by any of the following:

- a payment arrangement;
- a warrant of control (see here and Chapter 15);
- an attachment of earnings order (see here) (**note:** the thresholds for council tax are different to those for magistrates' courts fines); ¹
- deductions from the client's universal credit, income support, income-based jobseeker's allowance, income-related employment and support allowance or pension credit (see here);
- a charging order in the county court, provided there is at least £1,000 outstanding under one or more liability orders (see here);
- bankruptcy (provided at least £5,000 is outstanding) (see Chapter 10).

The local authority can also request that information about the client's means be supplied.

Enforcement of a liability order is done by the local authority, unless it chooses to return to the magistrates' court to seek the imprisonment of the client. ²

Local authorities can only use one of the above enforcement methods at a time for each liability order they are enforcing. If the local authority is using deductions from benefit to recover one liability order, the regulations do not appear to allow a local authority to use any other method of enforcement to recover any other liability order. The DWP does not make deductions for a later liability order until an earlier one has been paid off. ³

In theory, once the local authority has obtained a liability order, there is no time limit on enforcement. ⁴

¹ See legislation.gov.uk/ukxi/2006/3395/regulation/5/made. From 1 April 2022, the Welsh government raised the thresholds at which deductions from wages can be taken for council tax arrears: see legislation.gov.uk/wsi/2022/107/schedule/made

² Local authorities are permitted to contract out enforcement of council tax and non-domestic rates and authorise, for example, a firm of bailiffs, to exercise functions under the Local Authorities (Contracting Out etc) Order 1996 No.1880

³ Reg 52(2)(b) CT(AE) Regs

⁴ *Bolsover DC v Ashfield Nominees Ltd* [2010] EWCA Civ 1129

Setting aside a liability order

Although the legislation contains provisions enabling local authorities to apply to the magistrates' court to quash ('set aside') a liability order on the grounds that it should not have been made, these statutory powers have never been implemented. ¹

However, the High Court has confirmed that magistrates' courts have a limited common law discretion to set aside previous decisions made in the exercise of their civil jurisdiction (which includes the making of liability orders). Magistrates' courts must consider the following before setting aside a liability order. ²

- There must be a genuine and arguable dispute about the client's liability to pay.
- The liability order must have been made as a result of some substantial procedural error, defect or mishap.
- The set-aside application must have been made promptly once the client had notice of its

existence.

If the summons for the liability order was not properly served (see here), the Administrative Court has recommended a procedure for setting aside the liability order to avoid expensive litigation. ³

- On discovering the existence of the liability order, the client should promptly inform both the local authority and the magistrates' court that the summons was not properly served.
- The local authority should then satisfy itself as to whether or not the client's assertion is correct.
- If this is established, the client and the local authority should cooperate in making a joint application to the magistrates' court to have the liability order set aside.

If the local authority accepts that the order should not have been made, but refuses to apply to set it aside, the client can consider making a complaint to the Local Government and Social Care Ombudsman or Public Services Ombudsman for Wales, particularly if they are out of time to apply themselves.

¹ Sch 4 para 12A LGFA 1992

² *R (on the application of Newham LBC) v Stratford Metropolitan Council* [2008] EWHC 125 (Admin); see A Murdie, 'A low key anniversary', *Adviser* 130, p56

³ *R (on the application of Tull) v (1) Camberwell Green Magistrates' Court (2) Lambeth LBC* [2004] EWHC 2780 (Admin). If the magistrates refuse the application, the court pointed out that they will have acted unreasonably and could have a costs order made against them if an application for judicial review were necessary.

Committal to prison

Outcome of the committal hearing

Since 1 April 2019, it has not been possible for local authorities in Wales to start proceedings for the committal of clients for non-payment of council tax. In England, if an application to commit someone to prison is made, the court must arrange a hearing and hold a means enquiry (see here). ¹ These proceedings can only begin once a warrant of control has been issued and returned because insufficient or no goods belonging to the client could be found for whatever reason, including if it was because the enforcement agents (bailiffs) could not gain entry.

Do not rely on the court to produce paperwork. You should prepare a full statement of income, expenditure and debts, as well as a clear explanation of any particular difficulties facing the client.

The court must decide whether the client has shown ‘wilful refusal or culpable neglect’ in failing to pay (see here). The magistrates should consider the issue for the whole period up to the date of the committal hearing. In all cases, they must also consider the client’s ability to pay at the date of the hearing. ² Courts often equate failure to pay with refusal or neglect to pay regardless of the client’s financial situation. For this reason, make sure you produce evidence about the client’s income and spending and other priority debts. Free legal representation is available to assist clients at these hearings as well as at committal hearings concerning ‘financial penalties’.

Note: many magistrates’ courts do not allow lay representatives in committal hearings. If the magistrates do not accept you as a representative, you can act as a ‘McKenzie friend’ (see here).

The High Court has repeatedly advised magistrates that the purpose of committal in such cases is to obtain payment and not to punish the client. ³ Therefore, although there is no statutory obligation to do so, local authorities, as well as magistrates, should consider alternative viable methods of enforcement and not refuse reasonable offers of payment. ⁴ It is not necessary that all other options should have been used; they must only have been considered. ⁵ However, a suspended committal order is regarded as a method of enforcement in its own right. ⁶ Orders should not be suspended for more than two to three years and partial remission should be considered in order to reduce the sum in respect of which the order is being made. ⁷ The magistrates must take account of the principle of proportionality, with the maximum term being reserved for the most serious cases. The magistrates should use the tables of sentences provided for fines as a guide to the appropriate level of sentences. See *Anthony and Berryman’s Magistrates’ Court Guide* for more information.

The increasing reluctance of magistrates’ courts to make committal orders has led to many local authorities resorting to bankruptcy proceedings as an enforcement method if the client is a homeowner – in many cases, for debts that are only just above the £5,000 bankruptcy limit. For more details, see here. ⁸

¹ Reg 41(2) CC(AE) Regs; reg 47(2) CT(AE) Regs

² *Woolcock (R on the application of) v Cardiff Magistrates’ Court* [2017] EWHC 34 (Admin). See para 27 for discussion of principles

³ Re-emphasised in *Woolcock (R on the application of) v Cardiff Magistrates’ Court* [2017] EWHC 34 (Admin) at para 27, 3rd sentence

⁴ *R v Sandwell Justices ex parte Lynn*, 5 March 1993, unreported; *R v Alfreton Justices ex parte Gratton*, *The Times*, 17 December 1993

⁵ *Hargreaves v Powys County Council* [2022] EWHC 3176 (Admin)

⁶ *R v Preston Justices ex parte McCosh*, *The Times*, 30 January 1995

7 *R v Newcastle upon Tyne Justices ex parte Devine*, 23 April 1998 (QBD); *R v Doncaster Justices ex parte Jack and Christison*, *The Times*, 26 May 1999

8 See also A Murdie, 'End of the debtor's prison in sight? - challenging committal to prison for council tax', *Quarterly Account* 51, IMA

Outcome of the committal hearing

If the court decides there has not been wilful refusal or culpable neglect (see here), it can either remit (write off) all or some of the arrears ¹ or make no order at all. **Note:** local authorities can write off council tax arrears themselves (see here).

Although there is no time limit in which a local authority must enforce a liability order, the High Court has said that magistrates should consider remitting the debt on their own initiative if more than six years have elapsed between the date of the original default under the liability order and the committal hearing. ²

If the magistrates decide there has been wilful refusal or culpable neglect, they can issue a warrant committing the client to prison for up to three months. They can (and usually do initially) suspend this warrant on payment of regular instalments. This means the client will not be imprisoned, so long as the agreed payments are made. However, unlike financial penalties, the court no longer has the option to remit the debt. If the client fails to comply with the terms of the suspended order, the magistrates must be satisfied that they had the ability to pay before they can activate the committal order by arranging a further means enquiry. ³

If the arrears and costs to date are paid in full after the local authority applies for committal, no further recovery action can take place. If the client has been imprisoned, they must be released. If partial payment is made, the period of imprisonment is reduced proportionally. If the part payment is made after the term of imprisonment has been fixed but before the client begins to serve the sentence, the period to be served is also reduced proportionally.

The maximum fee for committal is £315. This is added to the arrears and other costs.

If a client is sent to prison, no further enforcement action can be taken for any unpaid arrears and costs. They are still owed, but cease to be priority debts.

1 Reg 42(2) CC(AE) Regs; reg 48(2) CT(AE) Regs

2 *R v Warrington Borough Council ex parte Barrett*, 18 November 1999, unreported; *R v Gloucestershire Justices ex parte Daldry*, 12 January 2000, unreported

3 *R v Felixstowe Justices ex parte Herridge* [1993] Rating Appeals 83

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Please be aware that welfare rights law and guidance change frequently. This page was printed on Friday, October 17, 2025 and may go out of date.