

Appendix 2

Thurrock Citizens Advice Bureau Evidence Report

Thurrock Council's approach to recovery of unpaid council tax

Executive Summary

Thurrock Citizens Advice Bureau has seen a substantial increase in the number of clients attending for advice and assistance in respect of council tax issues. Frontline advice staff have reported a number of cases that have highlighted a range of issues with regard to Thurrock's council's actions in relation to recovery of council tax arrears.

- ❖ Throughout the course of the past year, Thurrock Citizens Advice Bureau (CAB) has been approached by numerous local residents for advice regarding council tax arrears. Dealing with client enquiries relating to Thurrock Council's approach to council tax recovery and enforcement procedures has formed a substantial part of our workload over the past year, a considerable number of clients seeking advice on this issue have been directly signposted to the bureau by staff at the council.
- ❖ Bureau statistical records demonstrate a considerable increase in the number of enquiries relating to council tax arrears; in 2009-2010 we received **834 client enquiries** relating to council tax, in 2010-2011 (to date) the number has risen to **1270** enquiries, this represents an **increase of 52%¹**.
- ❖ The bureau has gathered evidence which suggests that Thurrock Council are deviating from accepted good practice in their pursuit of unpaid council tax, cases of particular concern are those involving vulnerable residents.
- ❖ This report highlights a number of case studies that demonstrate questionable practices in respect of enforcement action, including use of bailiffs in preference to other methods of enforcement, such as attachment to earnings and direct deductions, threatened use of bankruptcy proceedings and letters notifying clients that committal proceedings will be pursued in the event of non payment. While these are all legitimate options for the local authority, it is the context in which such action has been pursued that merits close consideration, particularly in the context of vulnerable residents.
- ❖ A lack of meaningful engagement between recovery staff and the bureau advice teams is becomingly increasingly problematic as we are unable to

¹ Bureau Case Management system CASE reports, standard reports, data set 14th Jan 2011.

progress cases by making representations on behalf of clients. The bureau has amassed considerable evidence to support our contention that recovery staff are not engaging with advisers and specialist caseworkers, cases are not being considered at the initial point of contact therefore staff are increasingly considering pursuing complaints or referring clients to their local elected representatives in order to seek redress.

- ❖ Adopting a collaborative approach based on good practice guidance will enable Thurrock council to attain and maintain healthy recovery rates whilst balancing the needs of local residents particularly those who are vulnerable. It is a fact that cannot be denied that some residents decide not to pay their council tax, however there are cases where residents are unable to pay due to genuine financial difficulties or genuine vulnerability; these factors should be considered when officers decide how and when to pursue enforcement action.

Factors impacting on residents' ability to pay council tax

Numerous factors can impact upon ability to pay council tax, examples of different issues that have affected clients approaching the bureau include, low income, loss of employment, delays in processing benefit claims and ill health or disability. A common theme in cases involving clients facing multiple debt is the payment of other non priority debts such as credit cards and store cards in preference to priority debts such as rent and/or council tax. An integral part of the debt advice process is to establish the extent of the client's debt by carrying out an examination of their financial circumstances.

Debt is our single largest enquiry area, and this year, to date, constitutes 44% of the bureau's work with clients. The bureau's vast experience with regard to the provision of general and specialist level debt advice over a period of many years ensures that we are ideally placed to assess the various factors that are effectively contributing to substantial levels of non payment of council tax. In the context of our experience as the leading provider of debt advice in the borough we have observed a shift in Thurrock Council's approach to council tax recovery.

Many of the cases presented to us by clients over the past year indicate that staff from the council tax department are adopting a tougher stance on recovery, this report includes a number of case studies which illustrate some of the challenges that clients have faced and the difficulties that CAB staff have faced with regard to assisting them.

National context

In July 2009 the Local Government Association, the Welsh Local Government Association and Citizens Advice, the national member organisation for over 400

bureaux across England and Wales collaborated to produce the collection of council tax arrears good practice protocol. A briefing published by Citizens Advice in July 2010 states that the **'protocol came about because of a growing recognition that all parties involved in the recovery of council tax arrears should work together. Underlying the protocol is an assumption of partnership between advice agencies, local authorities and bailiffs. It stresses regular liaison at operational and strategic level, information exchange, strategies for dealing with vulnerable people and flexible payment options'**.²

Working in accordance with the protocol enables local authorities to maintain a balance between the need to maintain healthy collection rates whilst ensuring that the needs of vulnerable residents and those facing financial difficulties are met. Working in a collaborative manner to ensure that the needs of the local authority are met whilst ensuring that the needs of vulnerable residents are given due consideration and that they are not treated in a disproportionate manner is surely in the interests of all concerned parties.

A harsher approach to council tax recovery and enforcement action would appear to be a national trend, an article published in The Times in January 2009 highlighted this issue, **'faced with a recession and budget squeezes, councils are increasingly using bailiffs and insolvency practitioners to get their money more quickly than by more conventional methods.'**³ The article emphasises the fact that councils face huge pressure to improve collection rates by both central government and the Audit Commission. Council tax collection rate statistics for 2009-2010 show that local authorities across England collected 21.4 billion out of a total of £22.1 billion; this represents a national average in year collection rate of 97.1% an increase of 0.1% over 2008-09. Since 2005-2006, the national collection rate has increased by 0.3%⁴. These statistics seem to demonstrate that on average national collections rates have not improved significantly. In light of these statistics it is difficult to determine if increased use of bankruptcy proceedings and bailiffs has actually contributed significantly to an improvement in collection rates as far as the national picture is concerned.

The Times published another article in 2009 entitled **'Thousands bankrupted over council tax debt.'**⁵ The article goes on to state the following:

Bailiffs were used in 1.2 million cases to recover council tax arrears last year, and 2.5 million households received courts summonses. Of 19,156

² Citizens Advice Briefing, Collection of council tax arrears good practice protocol update. One year on: collection rates maintained vulnerable protected. Adrian Galvin, July 2010

³ The Times, Bailiffs and bankruptcy become common currency of council tax, Jill Sherman, Whitehall Editor and Kaya Burgess, January 7th 2009.

⁴ Department of Communities and Local Government, Statistical Release, collection rates for council tax and non-domestic rates in England 2009-10, 22nd June 2010.

⁵ The Times, Thousands bankrupted over unpaid council tax, Jill Sherman and Frances Gibb, January 7th 2009.

bankruptcy petitions, one in five was lodged by local authorities. In 1992-93 the proportion was one in a hundred.⁶

In July 2009 BBC News also highlighted a Local Government Ombudsman complaint which focused on the actions of Manchester City Council, in that case the Ombudsman found that there had been 'significant failings' in the way that the council had recovered the council tax arrears via bankruptcy proceedings, the Ombudsman stated the following:

'I regard it as a fundamental flaw that the council should have been using this method of collection without a written policy for officers to refer to.'⁷

Use of bankruptcy proceedings for debts that amount to hundreds of pounds can increase such debts to the extent that they grow hugely to figures that are in the region of thousands of pounds. Putting homes at risk in the current economic climate where the government has been working to discourage banks from repossessing properties seems incongruous at best.

The way forward

The approach outlined in the aforementioned good practice protocol has garnered considerable support from a number of local authorities, David Waters Head of Revenues, Bath and North East Somerset District Council is cited in the Citizens Advice briefing as stating '**you can have a customer focus, be attentive to people's needs and not have a fall off in the (council tax) collection rates...it's not soft, it's customer focused.**'⁸

Increased engagement with advice agencies and advocates will help to ensure that local residents who are facing genuine financial difficulties as a result of factors that are completely beyond their control are able to effectively convey their circumstances, and have local authorities consider negotiating a way forward which will prevent exacerbating situations which are already hugely challenging for the individuals involved. While local authorities are not generally obliged to negotiate with residents who have council tax arrears, they are obliged to work in accordance with their vulnerable persons policies. Pursuing council tax debt via liability orders and enforcement action can be a costly and time consuming process which can cause a huge amount of distress to vulnerable people and those facing genuine financial difficulties.

Adopting a customer focused approach based on good practice need not hinder a local authority's ability to collect council tax, a meaningful dialogue with local residents and their advocates or advisers can in fact lead to more reasonable

⁶ Ibid

⁷ BBC News, Council bankruptcy use criticised, 7th October 2009, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/england/manchester/8293794.stm>

⁸ Citizens Advice Briefing, Collection of council tax arrears good practice protocol update, case studies.

payment agreements which can prevent people from becoming mired in further unmanageable debt or from suffering even more extreme consequences such as the loss of their home (a consequence which can often impose further burden upon the local authority itself, due to statutory duties in respect of homelessness legislation) .

Local Case Studies

Several key issues have been highlighted as a result of cases that have been dealt with by the bureau during the course of the past year; the following issues have arisen in a number of cases:

- The apparent absence of a working vulnerable adults policy
- Bailiffs charging unreasonable fees
- Threatened use of bankruptcy proceedings
- Threats to commence committal proceedings

Use of bankruptcy proceedings or bailiffs to levy distress or indeed the commencement of committal proceedings are all legitimate options for the local authority to consider, it is the perceived failure to consider other options which has been a cause of grave concern for many local residents and the bureau. Freedoms of Information requests on the council's own website provide some indication of the type of council tax issues that have caused particular concern. ⁹

The approach in cases involving vulnerable adults

In the following case the client is a carer for a disabled partner receiving both components of Disability Living Allowance; the carer has full time caring responsibilities and claims Carer's Allowance, their level of income is topped up by means tested benefits and is at a minimal level, barely sufficient to cover their essential weekly living costs. The client in this case received a letter threatening committal proceedings. Upon contacting Thurrock Council's recovery department our client alleges that he was met not only with a refusal to accept a payment arrangement but with threats of bankruptcy proceedings and committal proceedings and, in addition to this, threats regarding seizure of their car which was a motability scheme vehicle.

The client in this case informed us that his interaction with the council over this issue caused a great deal of distress, threats of bankruptcy and committal in this context could have no other consequence than causing a considerable amount of emotional and financial stress to an already vulnerable family. In this case the client was not provided with an opportunity to fully explain mitigating

⁹ Responses to Council Tax Freedom of Information Requests,
<http://www.thurrock.gov.uk/counciltax/content.php?page=foi>

circumstances which went some way to explaining how the arrears had arisen. The first bailiff firm instructed by the council actually returned the account to the council citing the debt as being uncollectable; the recovery department proceeded to instruct another bailiff firm to recover instead of contacting the client to reach a reasonable repayment arrangement. In the circumstances it would appear perfectly reasonable to ask the recovery department what they had hoped to achieve as the second bailiff firm reached the same reasonable payment arrangement that had already been arranged with the initial bailiff firm some weeks earlier. There is no evidence to suggest that the council staff involved acted in accordance with the council's vulnerable persons' policy.

A client living with mental health difficulties and learning difficulties had been moving in and out of work, she experienced substantial difficulties in respect of maintaining her benefit claims and managing her finances due to the nature of her medical conditions and the way that they impact on her day to day life, the client had been receiving assistance from a support worker. The client approached the bureau for advice after receiving a number of notices and texts from a bailiff firm instructed by the council. This client received general advice as well as specialist advice, the council were informed of the client's vulnerability on both occasions, however even after this the bailiff firm still proceeded to contact the client and the council actually sent the client a letter threatening that committal proceedings would be pursued in the event of the client not paying the arrears immediately.

Once again, there is no evidence to suggest that the staff involved worked in accordance with the council's vulnerable persons' policy. The Local Government Ombudsman case involving London Borough of Newham (08 019 113)¹⁰ would strongly suggest that this approach may not fare well in the face of independent scrutiny.

A common theme in the cases highlighted above is the fact that the council should have already been aware of factors indicating vulnerability, in the first case study the client's benefit situation had already been notified to the benefits section, in the second example the council had been notified by the bureau. A coordinated approach whereby the recovery department contacts the benefits section to assess if issues around council tax benefit claims are impacting on arrears would ensure that issues around vulnerability or problems with benefit claims are established at the earliest opportunity, this may help to prevent accrual of further arrears. Using existing information resources within the council by effectively utilising communication across departments, particularly benefits and social services departments would enable the recovery department to form an initial assessment which would inform decisions regarding potential enforcement action.

¹⁰ Local Government Ombudsman, London Borough of Newham (08 019 113). Local taxation, maladministration causing injustice, <http://www.lgo.org.uk/complaint-outcomes/local-taxation/local-taxation-archive-2005-to-date/newham-08-019-113/>

Bankruptcy Proceedings

In February 2011 our specialist debt team were informed by Thurrock council's recovery team that that homeowners with council tax arrears will no longer be allowed to set up arrangements to pay off arrears of council tax. We were informed that payment will now be demanded in full and if this is not met then bankruptcy proceedings will be instigated immediately. This would be done regardless of the equity in the property.

For debtors with equity in their properties bankruptcy will most likely result in homelessness. The bureau is unsure how this will provide any significant financial gain for the council when you consider that any money collected will have to be offset by the extra costs that the council's housing department is likely to face.

For those residents who either have no equity in their home or are in negative equity, bankruptcy is likely to result in any arrears, and the substantial costs involved in taking bankruptcy action, simply being written off. In such cases bankruptcy would be a purely punitive measure.

However the bureau has also seen a significant number of statutory demands, the pre-cursor for bankruptcy, being sent to non-homeowners some of whom are on extremely low incomes.

Bailiffs' fees and charges

We have dealt with numerous cases involving client enquiries regarding bailiffs' fees and charges.

Unless a bailiff successfully 'levies distress' they can only charge £24.50 for the first visit and £18.50 for the second visit. In order to charge more than this they would need to levy distress.

Levying distress is the name given to the procedure that bailiffs use to take over ownership of goods in preparation for their sale to enforce a debt. In order to levy distress successfully, it has been argued that the bailiffs must carry out two procedures: seizure, and impounding.

In a worrying number of cases it would appear that bailiffs operating in the Thurrock area have added the levy fee (a percentage of the council tax debt owed) and a flat fee (£105) for enforcing the levy without actually levying distress. It would appear that this may have occurred in numerous cases without

them entering the property or having a valid inventory listing the goods that have been seized. This has often been justified by listing vehicles outside the debtor's property which do not belong to them.

The bureau was approached for advice by a client who, to his knowledge, had paid off all arrears, he provided us with a copy of an unsigned walking possession agreement which listed a car not owned by the client. The firm of bailiffs instructed by the council, namely Newlyn Plc, added fees in excess of £190.00. The firm proposed to proceed with seizure of the vehicle and pursue payment of the fees that had been added to the account. Due to intervention from the bureau, Newlyn conducted a DVLA vehicle search and refunded the relevant fees.

A client caring for a disabled parent had no income due to issues relating to her claim for means tested benefit. The original amount of arrears amounted to around £260.00. Thurrock council instructed Newlyn and JBW to enforce the debt. The client had not signed a walking possession agreement and no goods had been levied. Newlyn made two charges in line with the legislation but then proceeded to add two further charges totalling over £240.00. In this case it emerged that a levy had taken place in respect of a vehicle that did not actually belong to the client. Due to intervention from the bureau the fees were removed from the account.

The bureau received numerous enquiries relating to the issue of bailiffs fees and charges, in another case a client had excessive fees added to her account despite the fact that there was no walking possession agreement in place and no valid levy had taken place, in this case the bailiffs instructed by Thurrock Council had again listed a vehicle, however the client in this case did not actually own a car.

The clients involved in these cases, which in fact constitute a small sample of the numerous enquiries that we have received on this issue, were not aware that these charges were not valid and would not have disputed them had it not been for advice and assistance from the bureau.

We suspect that certain bailiff firms may have been consistently charging levy related fees without actually securing a valid levy. Every case that has been challenged by the bureau has resulted in fees being removed and where necessary refunded. However in none of the cases that the bureau has investigated have bailiffs refunded the fees of their own volition, once clients had notified them that the vehicles did not belong to them; instead it has taken intervention from the bureau to ensure that fees are refunded.

As a result, unless debtors visited an advice agency or conducted private research they would be completely unaware that they have been overcharged. Within the last six months the bureau has seen over 30 instances of this practice, we are concerned that there will be many more cases that have not been reported to the bureau. We are also concerned that this kind of practice may have been occurring for several years.

Committal Proceedings

In the third quarter of this year our advisers reported a spate of cases involving letters that notified clients that the recovery department would seek committal proceedings. Some of the earlier case studies in this report also serve as examples of cases where clients have stated that they have received verbal or written information to the effect that the council will pursue committal proceedings if immediate payment of the full balance is not made.

In another case brought to the attention of our advisers, a vulnerable client who lives with learning difficulties and is known to social services received a letter from the council regarding committal proceedings and also received a letter from a bailiff firm instructed by the council. This is a case where the client's vulnerability was clearly known to the council as the client is one of their own tenants and had previously received community care services, yet the recovery team still proceeded to consider committal proceedings and raise this possibility with the client as well as seeking enforcement via bailiffs.

A particularly stark example involving an extremely vulnerable resident is a case where a client living with learning difficulties and severe mental health difficulties including anxiety disorder and long term depression attended the bureau for advice after the recovery department passed her council tax arrears to a bailiff firm to seek enforcement. This course of action caused extreme distress to the client and resulted in her attending the bureau to seek advice. Due to her health issues the client had considerable difficulty maintaining her benefit claims; this led to the client's council tax arrears. The bureau has asked for enforcement action to be placed on hold pending a consideration of whether or not an exemption should be applied on the basis of severe mental impairment. We have notified the recovery department with regard to the client's extreme vulnerability and the nature of her medical conditions; despite this the council have since issued the client with a letter threatening committal proceedings. In this case it is abundantly clear that committal proceedings would not be an appropriate course of action given the client's medical conditions, such action is particularly worrying in light of the fact that the recovery department have been notified of the nature of the client's vulnerability on multiple occasions.

It is particularly interesting to review the council's actions in the above mentioned case in light of the Local Government Ombudsman case involving Newham council¹¹, whereby the Ombudsman found that the local authority should have carried out checks with their adult social care team prior to pursuing bankruptcy proceedings in relation to a resident living with mental health difficulties. Clearly applying this practice in all cases involving potentially vulnerable adults would prevent the council from pursuing council tax arrears against such individuals in a disproportionately harsh manner.

An unemployed couple with a young child received correspondence relating to arrears from a former address, their income primarily consisted of means tested benefits. The client received two letters from Thurrock Council stating that they would pursue committal proceedings if the balance was not paid immediately. The client attempted to make reasonable offers of payment in light of her limited income which consisted of means tested benefits, these offers were rejected and she alleges that she was verbally informed that the council would pursue committal. The bureau intervened on the basis that committal would not be a viable course of action in light of the fact that the client had neither demonstrated wilful refusal nor culpable neglect in relation to the arrears. The recovery department proceeded to pursue enforcement action by bailiffs; in this case the client also stated that recovery staff informed her that she would be made bankrupt if she refused to allow bailiffs into her home. The bailiffs in this case proceeded to place a seizure notice through her door which related to a vehicle that she did not own.

This single case almost appears to demonstrate much of the spectrum of issues that many other clients have raised, in the sense that it involves an invalid levy, threats of committal and apparent refusal to even consider reasonable offers of payment.

Managers and Supervisors at the bureau have noted a shift in the council's approach to recovery which appears to be increasingly single minded; over the past year advisers and caseworkers have consistently reported difficulties to management and supervisory staff with regard to their contact with staff from the recovery team. We appear to have moved away from a working arrangement whereby bureau staff were able to effectively submit arguments in support of their clients and present mitigating circumstances and arrange sustainable and reasonable payment arrangements to a situation where communication has deteriorated to the point where we no longer have the ability to effectively progress cases in a mutually constructive manner. The only remaining option in the absence of constructive dialogue has been action under the council's complaints procedure. Bureau staff, many of whom are volunteers, have informed management that recovery staff have been consistently refusing to consider any representations that are made on behalf of clients. Requests for

¹¹ Ibid

enforcement action to be placed on hold, for accounts to be called back from bailiffs, or for reasonable repayment offers to be accepted have been roundly refused. The bureau has numerous records of emails and letters which have not received responses.

We interviewed a client who is living with depression; he and his partner are both unemployed and claiming benefits. Bailiffs had attended their address and were allowed into the property; the client informed us that he was verbally warned that committal proceedings may be pursued. The client in this case is extremely vulnerable; he had been sectioned due to his mental health issues following a suicide attempt. The council were informed of the client's circumstances and a hold on recovery action was requested. Despite this the client and his partner continued to receive text messages from the bailiff firm and the council did not respond to the bureau's correspondence.

Despite having participated in a series of meetings with management staff from the recovery team, our ongoing monitoring of the situation at supervisory and management level would suggest that this situation has yet to improve.

Conclusion and recommendations

The case studies contained herein represent only a small proportion of cases that have been presented to the bureau in recent months. Feedback from advisers and specialist debt caseworkers strongly suggests that the situation may actually be worsening; we have recently been informed that the recovery team will be pursuing bankruptcy proceedings in all cases where clients own a property, irrespective of their circumstances. The recovery team appear to be so enthusiastic about this approach that they have recently notified one of our debt caseworkers that they will press ahead with issuing bankruptcy proceedings against a client who is in negative equity.

As a result of our ongoing monitoring of this situation across our specialist debt team and our management and supervision team we have reached a consensus that we have effectively reached an impasse. Despite a series of meetings and communication at management level it has been the case that we have been unable to reach a mutually acceptable way to effectively improve engagement with our advisers and caseworkers and enable clients, particularly those who are vulnerable, from being pursued in a manner which does not allow the facilitation of negotiation based on a consideration of compelling mitigating factors. Issues such as significant levels of under claiming of council tax as well as physical and mental health issues, caring responsibilities, loss of employment all among the various factors which can contribute to council tax arrears, arguably Thurrock's recovery team is applying a one size fits all approach which does not allow for consideration of other factors, certainly the numerous cases that have been dealt

with by the bureau would appear to support such a contention. Furthermore this approach would appear to be contrary to Local Government Ombudsman guidance.

The council's own website and much of the recovery team's correspondence; including their bailiff surgery leaflets refer to the fact that residents can receive independent advice at the bureau. Council staff also often verbally signpost staff to the bureau, residents often come to the bureau with an expectation that we will be able to succeed where that have failed, however the continued failure of recovery team staff to engage means that the reality of their experience is somewhat different to the level of their expectations.

We would suggest that meaningful engagement between the bureau and the recovery team is an aim that can be effectively achieved by working in accordance with the good practice protocol (attached at appendix 1). We would suggest that reviewing communication across council departments such as the recovery team and benefits as well as social services would allow for highly relevant issues such as under claiming of council tax benefit, any physical or mental health issues or learning difficulties to be established at an early stage. Good practice dictates that each case is determined on its merits, the most appropriate method of enforcement can be determined and pursued without impacting adversely on recovery rates.