

FOI: 22453743 Exercising discretion when applying to the court for a Council Tax Liability Order

The Council Tax (Administration and Enforcement) Regulations 1992 (the "Regulations") confer a duty on the billing authority to exercise discretion under regulation 34(1) when deciding whether to institute a complaint to the Magistrates' court to enforce payment. Regulation 34(1) as amended by Regulation 15 of SI 1992/3008 states, with the relevant part emphasised, as follows:

"If an amount which has fallen due under paragraph (3) or (4) of regulation 23 (including those paragraphs as applied as mentioned in regulation 28A(2)) is wholly or partly unpaid, or (in a case where a final notice is required under regulation 33) the amount stated in the final notice is wholly or partly unpaid at the expiry of the period of 7 days beginning with the day on which the notice was issued, THE BILLING AUTHORITY MAY, in accordance with paragraph (2), apply to a magistrates' court for an order against the person by whom it is payable."

Regulation 34(2) states as follows:

"The application is to be instituted by making complaint to a justice of the peace, and requesting the issue of a summons directed to that person to appear before the court to show why he has not paid the sum which is outstanding."

The following are examples (but by no means exhaustive) of what are reasonable factors a recovery officer should take into account in exercising discretion to institute a complaint to the Magistrates court under paragraph (2) of regulation 34 of the Regulations:

1. the level of debt outstanding
2. any payments made subsequent to the full amount becoming due and time remaining of the financial year
3. are circumstances indicative of the debt being settled without resorting to enforcement
4. consider if enforcing the debt would unnecessarily subject the taxpayer to additional costs etc. and therefore amount to a penalty (see 3 above)
5. ensure monies have been prioritised to maintaining the in-year debt
6. allocate to the in-year any monies posted to arrears (or sufficient of it) that would if it had not been misallocated prevented the in-year liability also falling in arrears (see 5 above)
7. check for benefit claims or appeals already in the system and refrain from taking enforcement action where such genuine cases are unresolved

Q1. Does Tower Hamlets Borough Council exercise discretion before proceeding under regulation 34(2) of the Council Tax (Administration and Enforcement) Regulations 1992 to request a summons from a justice of the peace (it may be an automated process)

Yes.

Q2. If yes to (1) what factors are taken into consideration

- Outstanding correspondence
- Parameters set to exclude accounts with low level debt
- Taxpayer deceased
- Outstanding complaint under investigation
- Accounts with an address outside England
- Insolvency
- Contact from taxpayer at reminder stage