



Brighton & Hove City Council
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Ms Helen Barker

FOI Reference: 6476445

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Date: 19 May 2020

Your reference: request-658714-06dd7d10@whatdotheyknow.com

Dear Ms Barker

Freedom of Information Act 2000

We can confirm that the information requested is held by Brighton & Hove City Council. We have detailed below the information that is being released to you.

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 Brighton and Hove City 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)? **Response Yes**

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

Responses in bold

1. the level of debt outstanding - **We only instigate action if a monthly payment has been missed. Our standard approach is to take action if that missed payment is more than £20 but we keep this under review as necessary to ensure that we adhere to our legal duty to collect the tax.**

2. any payments made subsequent to the full amount becoming due and time remaining of the financial year – **If a payment is made to clear the arrears before the action starts we will consider withdrawing the action**

3. are circumstances indicative of the debt being settled without resorting to enforcement – **We only take action if there has been no contact from a resident or payment of the arrears after our attempts to contact a resident to resolve the situation have failed.**

4. *consider if enforcing the debt would unnecessarily subject the taxpayer to additional costs etc. and therefore amount to a penalty (see 3 above)* **All costs applied are the costs incurred to the public in recovery of the debt and adhere to the legislation.**

5. *ensure monies have been prioritised to maintaining the in-year debt* **Yes**

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)* **Yes if we are made aware of a misallocated payments we will re allocate the payment and taking all other factors into account will consider not taking action against a resident in this scenario.**

7. *check for benefit claims or appeals already in the system and refrain from taking enforcement action where such genuine cases are unresolved* **We do take this into consideration but there is a legal duty to pay the council tax whilst waiting for a benefit claim to be resolved**

Please quote the reference number 6476445 in any future communications.

If you are dissatisfied with the handling of your request, you have the right to ask for an Internal Review. Internal Review requests should be submitted within two months of the date of receipt of the response to your original request, as per ICO Guidance <https://ico.org.uk/your-data-matters/official-information/> and should be addressed to:

foicases@mail.brighton-hove.gov.uk

or by post to;

Information Governance Team
Brighton & Hove City Council
4th Floor, Bartholomew House
Bartholomew Square
Brighton
BN1 1JE

If you are still dissatisfied with the Council's response after the Internal Review you have a right of appeal to the Information Commissioner at:

The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF.

Telephone: 0303 123 1113

Website: www.ico.org.uk

We will now close your request as of this date.

Yours sincerely

Information Governance Officer