

In accordance with your request, I have reviewed the Council's responses to your Freedom of Information enquiry.

I have noted, during my consideration of this matter, that there are some additional questions raised which were not included in the original request. I have provided responses to those additional questions as part of this review.

For clarity, I have reproduced your request in its entirety and provided my responses to each below:-

MY FIRST QUESTION WAS

What pieces of primary- and secondary-legislation grant Tewkesbury Borough Council the legal power to act as Courts' Clerk in effectively issuing summonses, seeking to place land-charges and instigating comital proceedings in relation to alleged 'arrears' in residential Council Tax payment?

YOUR ANSWER TO MY FIRST QUESTION WAS

The statutory provisions covering the enforcement of Council Tax are contained in the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992. The Council Tax (Administration and Enforcement) Regulations 1992 contain the regulations regarding the issue of summonses for non-payment of Council Tax and all enforcement remedies, including charging orders and committals.

MY RESPONSE TO YOUR FIRST ANSWER IS

With respect, you have not answered my question. My question centres on the notion that Magistrates Courts – as distinct from Magistrates – are serving the purpose of 'legitimising'/'legalising' the enforcement procedures employed by Tewkesbury Borough Council [TBC] in relation to Council Tax recovery.

What I sought to establish was:

[A] the manner in which enforcement was being implemented by TBC, and

[B] the degree [if any] to which Magistrates acted independently of TBC in relation to Council Tax recovery procedures.

Could you therefore please kindly provide direct and honest answers both these last questions and , [A] and [B]?

Review response

1 [A] You have already been provided with the statutory authority which enables the Council to enforce Council Tax debt. The Council does not act as the Clerk to the Magistrates' when using those statutory powers. The Magistrates' Court has processes independent of the Council to ensure that any proceedings comply with the necessary requirements and that the Court makes a decision on any case put before it.

I thought it would be helpful if I outline the Council's process in taking action to recover arrears of Council Tax which is as follows:-

Liability Orders

1. All Council Tax accounts are regularly monitored, enabling the Council to be aware of any arrears of payment.

2. Where arrears are showing on any account, a Reminder Notice is sent to the person(s) liable for the payment of the Council Tax, asking for payment within the next 7 days.
 3. In the event that this reminder does not result in the matter being resolved, the Council applies for a Liability Order by submitting a Complaint to the Magistrates' Court and issuing summonses to those included within the Complaint. The Clerk of the Magistrates' Court acknowledges the receipt of the Complaint and provides written authorisation for the issue of the summonses covered by the Complaint.
 4. The summonses state the date upon which the Court will hear the Complaint. This provides the person summonsed with a further opportunity to resolve the debt informally with the Council. Where payment is made in full, the Council withdraws the summons and notifies the Court accordingly.
 5. If a person in receipt of a summons wishes to challenge the debt for which the summons has been issued, they are entitled to be heard by the Magistrates who will be deciding the case. The date for the Hearing is provided in the summons.
 6. The Court requires to be satisfied by the Council that the debt has been incurred and in particular the Council must, in accordance with the Council Tax (Administration & Enforcement) Regulations 1992 provide certificates to the Magistrates Court to confirm that:-
 - a. the Council Tax Demand Notice has been issued to the person owing the Council Tax
 - b. that in accordance with Regulation 23 of the above Regulations, a Reminder Notice has been served on the person owing the Council Tax
 - c. that, following the making of the complaint to the Clerk to the Magistrates Court, a summons was sent by first class post to the person owing the Council Tax
 - d. that the debt set out in the summons was produced by a computer programme which examined all changes to the chargepayer's account during the relevant period referred to in the Complaint and that the final debt set out in the Complaint takes account of all debits and credits to that account. The certificate goes on to provide that there are no reasonable grounds which would render the computer-generated information inaccurate by improper use of the computer and further that the computer was operating properly during the relevant period.
 7. The Council attends the Hearing* before Magistrates on the date specified in the summons and, if the Court is satisfied that the arrears are due, a Liability Order is made. As set out at 5) above, this is the opportunity for the person in receipt of the summons to be heard by the Magistrates and challenge the information provided by the Council.
- * I would make you aware that the Magistrates Court continues to operate under Covid restrictions and therefore Hearings which were, before March 2020, in person by attendance at the relevant Magistrates' Court, are currently held by way of telephone Hearing.
8. Once the Magistrates' Court makes a Liability Order, the Council further monitors payments on the account, the subject of the order. If the debt remains unpaid, the Council assesses on an individual case basis, the appropriate means of enforcement for each particular case.

Enforcement of Liability Orders

9. Following the making of a Liability Order, the Council seeks, wherever possible, to agree with the debtor, the means of repayment. This may be by a payment settling the debt (including costs, currently £55 per Liability Order) either in a single payment or by instalments.
10. In those cases where settlement of the debt has not been achieved, the Council has a variety of enforcement options as follows:
 - a. Attachment of Earnings Order / Attachment of Benefit - If the Council has details of a debtor's employer or is aware that are in receipt of benefit, it may seek an attachment of earnings / benefit arrangement, which means that the debt is settled by instalments to be deducted from the debtor's earnings / benefit.
 - b. If a) above is not available and the debt remains unpaid with no arrangement having been made for repayment by instalments, the Council issues a further Notice requiring payment (or making an arrangement to pay) within 14 days. If this does not achieve a response, the Council may instruct

Enforcement Agents (Bailiffs) who then try themselves to make a payment arrangement before, as a last resort, attending the property to remove goods to satisfy the debt.

11. The Council does endeavour, in every case, to negotiate settlement by the repayment of the debt, but, as a last resort may seek a Committal Order. This requires an application to the Magistrates Court using a procedure similar to that used for the Liability Order as set out above. The debtor must attend Court for such a Hearing. If the Magistrates are satisfied that the debt remains unpaid, they can make an order committing the debtor to prison.
12. A Charging Order is available where the debtor owns property, whereby the debt becomes a charge on that property. This means of enforcement has not been used by the Council for many years and certainly not, as was clear from the response to your request, within the period of your enquiry.

1 [B] As you can see from the response to question 1 [A] any decision on whether or not to make a Liability Order or a Committal Order is that of the Magistrates.

[C] Equally, you have not acknowledged the underlying principle which is that in line with Ministry of Justice requirements, the Council Tax summonses are supposed to be issued by the Magistrates' Court when TBC's application for summonses are approved and endorsed by a Magistrate/ Legal Adviser and the Council informed of the outcome of their applications. Why not?

So – even if summonses are served on the Respondent by TBC –

[a] IF THE SUMMONSES ARE ISSUED BY THE MAGISTRATES COURT, WHY ARE THESE SUMMONSES NOT ON MAGISTRATES' COURT OFFICIAL CROWN-HEADED PAPER, ENDORSED AND SEALED BY THE MAGISTRATE OR HIS/HER CLERK?

[b] HAS EACH AND EVERY SUMMONS SERVED BY TBC BEEN APPROVED AND ENDORSED BY THE MAGISTRATE OR HIS/HER LEGAL ADVISOR, MEANING THAT BY IMPLICATION, THE MAGISTRATE/ LEGAL ADVISOR HAS READ-THROUGH AND APPROVED THE SUMMONS?

[c] FOR THE YEARS IN QUESTION, HOW MANY OF THE COUNCIL-TAX SUMMONSES SAID TO HAVE BEEN SERVED BY TBC, WERE ACTUALLY HEARD IN FRONT OF A MAGISTRATE?

[d] ARE THESE LATTER PROCEEDINGS RECORDED AS AN OFFICIAL RECORD OF THE MAGISTRATES' COURT-SITTINGS, AVAILABLE FOR PUBLIC VIEWING?

Review response

1 [C] As you can see from the response to question 1 [A] the summonses are issued by the Council, but only when approved for issue by the Magistrates' Court. This is the process which has been agreed by the Court for this purpose.

[a] See response to 1 [C] above

[b] The summonses are approved by the Magistrates' Court. The process adopted by the Magistrates' Court for this approval is not information which is held by the Council.

[c] As you will see from the process referred to in 1 [A] above, all summonses issued by the Council and not withdrawn as at the date set for the Hearing were heard by Magistrates.

[d] The processes and recording of decisions by the Magistrates' Court is not information held by the Council.

MY SECOND QUESTION TO YOU WAS

What measures are Tewkesbury Borough Council [TBC] obliged by Statute- and Common Law [especially in relation to Duty of Care] to adhere to before instigating Court proceedings for recovery of alleged non-payment of residential Council Tax and/or instigating comital proceedings or seeking land-charges for the same alleged non-payment? And what safeguarding measures do the Council actually take in this respect of each case where the Council subsequently instigates proceedings?

YOUR RESPONSE TO MY SECOND QUESTION WAS

Ensure the Council Tax has been correctly set, the property is entered in the Council Tax valuation list, a demand notice and reminder notice as required by regulations above have been issued .

MY RESPONSE TO YOUR RESPONSE TO MY SECOND QUESTION IS

Your response does not indicate the stage [if any] in the proceedings whereby the Magistrate is able to independently intervene in relation to errors and omissions on the part of TBC. If summons that are being served on Respondents by TBC are supposed to have been read in detail and subsequently approved and endorsed by the Magistrate/ his or her Legal Advisor, then why are there instances whereby the Council have failed to have regard to critical matters when not only drafting erroneous summons, but serving them as well, using Council-headed stationary?

Review response

The Council is required to provide the information set out in response to item 1 [A] above, the detail of which is set out in paragraph 6). As you will see from the various steps required by the Regulation, to be carried out before summonses are issued, there is ample opportunity for those whom the Council consider to be in arrears with their Council Tax payments to contact the Council to discuss any concerns or to provide relevant information. The Council's aim is for the monies owed to be paid and it gives every opportunity to those who have missed payments, or have fallen into arrears, for whatever reason, to make an arrangement with the Council for repayment. In addition, each person receiving a summons has the opportunity to address the Magistrates' Court direct at a Hearing and to provide evidence as to why the Council's information is inaccurate. The Council is very careful to ensure that it has regard to all relevant matters and complies with the Regulatory requirements, to avoid any 'erroneous' issue of summonses. You have not provided any details of the instances where you believe this not to be the case, but, if there is information which you consider has not been taken into account by the Council, then you should provide the details to revenues@tewkesbury.gov.uk

MY THIRD QUESTION TO YOU WAS

How many cases/proceedings - have been instigated by Tewkesbury Borough Council for the years 2017-8, 2018-9, 2019-20 and 2020-21 - in relation to

[a] the collection of residential council tax 'arrears';

[b] the seeking of land-charges for alleged non-payment of residential Council Tax;

and

[c] comital proceedings

have been heard in the relevant Courts, and for each of [a], [b] and [c] what numbers of cases have been 'won' by the Borough Council?

YOUR RESPONSE TO MY THIRD QUESTION WAS

2017/2018 2792 summons for non payment Nil charging orders Nil committal summons

2018/2019 3182 summons for non payment Nil charging orders Nil committal summons

2019/2020 3422 summons for non payment Nil charging orders 4 committal summons 2020/2021 Nil summons for non payment Nil charging orders Nil committal summons

No applications have been dismissed by the Magistrates in the above years.

MY RESPONSE TO YOUR THIRD-QUESTION RESPONSE IS

Your response does not make it clear whether, in relation to the total number of summonses for the four years in question, Tewkesbury Borough Council recovered in full the Council Tax arrears and costs. Can you please clarify?

Nor does it make it clear what the outcome was for the 4 committal proceedings in the financial year 2019/2020. In other words, what action was taken in relation to the 4 committal proceedings? Again, could you please clarify?

Finally, when you say that no applications have been dismissed by the Magistrates in the above years, is this because a Magistrate was not involved, having no material role in the process of 'recovery of outstanding Council Tax'?

Review Response

Your question sought numbers of cases/ proceedings instigated during a specified period and this was provided. Your reference to land-charges has been taken to be Charging Orders, which are a means of enforcement available to Local Authorities and results in a charge being put on the debtor's property. The Council has not applied for any Charging Orders within the period specified in your request.

As far as your request as to the number of cases 'won' by the Council is concerned, this was responded to albeit not perhaps as clearly as you would have wished. The response that 'no applications were dismissed by the Magistrates in the above years' means that the Council was successful in obtaining Orders in respect of all of the Liability Order proceedings which it placed before the Magistrates. I would also make the comment that this is not about winning and losing it is about the payment of Council Tax that is owed.

Your statement that the answer previously given by the Council does not make clear whether the full Council tax arrears and costs were recovered, does not appear to have been part of the original question. However, I can confirm that, in respect of the Council's performance in Council tax recovery, it is required to make an annual return which is published by the Government. These returns for the periods which you have referred to can be found via the following link:-

[Collection rates for Council Tax and non-domestic rates in England, 2020 to 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/council-tax-recovery)

As far as the four Committal Orders sought by the Council in 2019/20 are concerned, in 3 cases the magistrates ordered monthly payments which have been maintained and in one case weekly payments which has been maintained. No suspended committal orders were made in any of these cases.

You will now be aware, from the review responses, all Liability Orders and Committal Orders are made by Magistrates who have a material role in the enforcement of Council tax recovery.

Please note, this information is release under the Open Government Licence for Public Sector Information - www.nationalarchives.gov.uk/doc/open-government-licence/version/2

If you are not satisfied with our internal review response, you have a further right of appeal to the Information Commissioner:

- Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
- <https://ico.org.uk/make-a-complaint>
- Telephone- 0303 123 1113

Kind regards
Head of Democratic Services