

## EK SERVICES POLICIES AND PROCEDURES

# INSOLVENCY (BANKRUPTCY & LIQUIDATION) AND CHARGING ORDER POLICY

Canterbury City Council, Dover District Council and Thanet District Council have entered into a shared service agreement to allow joint working in the Customer Services, ICT, Benefits, Council Tax and Business Rates sections.

Where 'EK Services' and 'EKS' are mentioned this refers to the shared service between Canterbury City Council, Dover District Council and Thanet District Council

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## **1.0 Introduction and purpose of policy document**

- 1.1 This policy covers debts owed to Canterbury, Dover & Thanet Councils and is written mainly for the recovery of Council Tax, Non Domestic Rates, Housing Benefit Overpayments and Sundry Debts.
- 1.2 EK Services are committed to using the most effective recovery methods available to it. This policy will ensure that EK Services' use of insolvency and charging orders proceedings complies with the relevant legislation and best practice.
- 1.3 In this policy any reference to 'we' and 'our' means EK Services.

## **2.0 Insolvency – Bankruptcy and Liquidation**

### **2.1 Legal Requirements**

- 2.1.1 The law relating to insolvency, both personal and corporate, is principally contained in the Insolvency Act 1986 and the Insolvency Rules 1986.
- 2.1.2 Bankruptcy proceedings are taken against individuals and liquidation (or winding - up) proceedings are taken against Limited Companies.
- 2.1.3 Insolvency action takes place in the County Court or the High Court if the customer resides in London. Insolvency action can be taken against customers who owe in excess of £750.00 to creditors and who, for whatever reason, are unable to pay the creditors' claims in full. The purpose of the process is to ensure that any assets of value are shared fairly amongst the creditors.
- 2.1.4 Insolvency frees a customer from overwhelming debts in order that they can make a fresh start. The consequences can be severe and can involve the loss of the customer's home or business and considerable legal and Trustee costs. The level of costs reflects the complexity of the matters involved and the extent to which the customer co-operates with the Trustee who is administering the debt.

## **2.2 Personal Insolvency – The Process for Bankruptcy Proceedings**

2.2.1 In cases where EK Services has decided that it is appropriate to pursue bankruptcy proceedings against an individual, it must first serve a Statutory Demand. A Statutory Demand is a formal, written demand served on the customer for payment of the arrears due.

2.2.2 A person receiving a Statutory Demand will be advised by EK Services to seek their own legal advice as soon as possible because once the demand is served the recipient must either:-

- Contact EK Services to ask that consideration be given to set aside the demand; or
- Apply to the court to have it set aside within 18 days of the demand being served on them (after first giving EK Services the opportunity to respond to the request for the demand to be set aside); or
- Pay the amount due in the Statutory Demand within 21 days after service of the demand; or
- Inform EK Services immediately (or within 21 days of the demand being served) that they are willing and able to offer security for the arrears due (offer a voluntary charge over the property as security for the debt); or
- Inform EK Services immediately (or within 21 days of the demand being served) that they are willing and able to make an arrangement for payment that is acceptable to EK Services.

2.2.3 The Statutory Demand served by EK Services will be accompanied by a copy of the Insolvency Services booklet “A Guide to Bankruptcy” (see Appendix 1). As well as providing guidance on bankruptcy, the leaflet provides useful names and addresses of organisations to contact for help and advice.

2.2.4 Should a customer fail to contact EK Services within the required timescales, EK Services will consider presenting a petition to the appropriate County Court for the customer’s bankruptcy.

2.2.5 A Bankruptcy Petition is presented in a County Court, which serves the area where the customer lives or trades. The Petition will state the amount owed and is

ordinarily presented on the basis that the customer has failed to comply with the terms of the Statutory Demand.

- 2.2.6 Following the issue of a petition in the County Court, EK Services will then serve a Bankruptcy Petition on the customer, which contains the date on which the Court will consider whether or not to make a Bankruptcy Order.
- 2.2.7 If a Bankruptcy Order is made, the Official Receiver (a government department) will initially take control of the customer's assets. EK Services will nominate its Insolvency Practitioners to supervise the sale and distribution of all the customers' assets, although in some cases this will remain under the supervision of the Official Receivers.
- 2.2.8 A Bankruptcy Order is usually discharged after one year, although there are certain circumstances where this period can be either shortened or extended.

## **2.3 Corporate Insolvency – The Process for Liquidation (Winding – up) Proceedings**

- 2.3.1 As in the case of personal insolvency, EK Services will commence legal proceedings by issuing a Statutory Demand. The recipient must also follow the requirements listed under paragraph 2.2.2.
- 2.3.2 The Statutory Demand served by EK Services will be accompanied by a copy of the Insolvency Services booklet "A Guide to Bankruptcy" (see Appendix 1). As well as providing guidance on bankruptcy, the leaflet provides useful names and addresses of organisations to contact for help and advice.
- 2.3.3 Should a customer fail to contact EK Services within the required timescales, EK Services will consider presenting a petition to the Court for winding – up the company. The petition is advertised in the London Gazette as well as being served on the company.

2.3.4 At the Court hearing, the Court does have the discretion to dismiss, adjourn or make a winding-up order. Providing EK Services has satisfied all the evidential and legal requirements, it is likely that the winding up order will be granted.

2.3.5 The Official Receiver will then deal with the legal requirements to wind-up the company and distribute assets to the creditors, or EK Services can nominate its own Insolvency Practitioners.

## **2.4 Use of Solicitors and Insolvency Practitioners**

2.4.1 EK Services will refer appropriate cases to Insolvency Practitioners and will use Solicitors to undertake this work. Following a tender process, Insolvency Practitioners and Solicitors will be appointed to carry out Insolvency work on EK Services behalf.

2.4.2 The Insolvency Practitioners and Solicitors are fully authorised to deal with all matters connected with insolvency proceedings from the issue of a Statutory Demand to dealing with contested matters.

## **2.5 Considerations for using insolvency proceedings**

2.5.1 EK Services will use insolvency proceedings as a last resort, when alternative methods of recovering arrears have all been explored and have either failed or are inappropriate. Insolvency action will commence with the intention to be followed through and not used as a means to persuade customers to pay.

2.5.2 EK Services will consider using insolvency proceedings under the following circumstances (this list is not exhaustive);

- Where overall arrears exceed £2,000 and the customer has sufficient assets or equity to ensure the arrears are recoverable by the Official Receiver or the Trustee;
- Where the customer is not making regular and mutually agreed payments that are sufficient to clear accruing arrears within a reasonable timescale;

- Where insolvency action is considered the most effective method of collection;
- Where specific assets have not been identified but there are indicators that the debtor is one of high material worth i.e. has a high salaried profession.

## **2.6 Information gathering and file preparation**

2.6.1 As part of the decision making process when considering whether insolvency action is appropriate in an individual case, officers are required to undertake the following (in all cases, without exception, each appropriate method will be formally documented and recorded on file);

- Build a picture of the customer and their circumstances including overall arrears position, income and equity and previous payment history;
- For each alternative recovery method reasons that alternative methods have been dismissed;
- All Council records available are checked to see if there is a reason why bankruptcy would not be appropriate;
- Checking all Benefit records, where applicable, to ensure the maximum benefit entitlement has been awarded;
- An H.M. Land Registry check to confirm property assets;
- An Experian search for information on expenditure and arrears outside of EK Services records;
- A Companies House check, where applicable, for records of business information;
- For each case, Social Services and/or the Community Mental Health Team must be contacted to check whether there is a record held for the customer.

## **2.7 Special Circumstances**

2.7.1 Should EK Services be made aware of any exceptional circumstances after bankruptcy proceedings have commenced, we will always consider withdrawing proceedings in favour of an alternative recovery method. Each case will be looked at on its own merit and individual circumstances taken into account.

2.7.2 Examples of special circumstances are as follows;

- Where a customer, as a result of their age, are unable to deal with their affairs;
- Where a customer has severe mental illness or serious learning difficulties and are unable to manage their affairs;
- Where a customer is found to be a client with Social Services / The Community Mental Health Team;
- Where the customer is in receipt of 100% Council Tax Benefit with no accruing debt;
- Where the customers medical state would preclude any further action.

This list is not exhaustive and EK Services reserve the right to withdraw insolvency proceedings for reasons other than the above, but generally, this will only be in exceptional circumstances.

## **3.0 Charging Orders**

### **3.1 Legal Requirements**

3.1.1 The law relating to Charging Orders is principally found in the Charging Orders Act 1979.

3.1.2 A Charging Order is an Order from the County Court placed on a customer's property (house or land) for monies owed to a creditor. A Charging Order gives EK Services security for the arrears; in other words, the arrears would become "secured" like a mortgage on a property.

3.1.3 Charging Orders are not a method of enforcement in that the debt remains unpaid until the property is sold and the Charge is extinguished by the payment of the arrears from the proceeds. If the arrears are to be actively recovered, then following a Charging Order being obtained, an application can be made to the County Court for an Order of Possession and Order of Sale.

3.1.4 Charging Orders may only be used within Business Rates by agreement with the customer and therefore, will not be instigated without written consent.

### **3.2 Charging Orders – The Process**

3.2.1 In cases where EK Services have decided that it is appropriate to commence Charging Order proceedings against an individual, it must first make application for a County Court Judgment for full payment of the arrears (often referred to as a forthwith judgment). If full payment is not made EK Services will apply to the court for a Charging Order to enforce the judgment.

3.2.2 The application for a Charging Order has two stages:

- **Stage One – The Interim Order**
- **Stage Two – The Final Charging Order**

3.2.3 **Stage One** – EK Services will make an application for a charging order and the County Court will make what is called an interim charging order if it is satisfied that a customer owns, or has a part share (an interest), in the property in question.

3.2.4 An interim charging order is usually made automatically without a hearing and a date for a full hearing is set thereafter. A copy of the interim order must be sent to the customer at least 21 days before the hearing date set by the District Judge. EK Services will register the interim charging order as a “caution” on the customer’s property with Land Registry and this means a customer is unable to sell the property before the hearing.

3.2.5 **Stage Two** – The second stage is the court hearing before the District Judge who will decide whether or not to make the charging order permanent (Final Order). If a customer objects to a charging order being made final then they have to supply written evidence to the Court and to EK Services immediately (or at least 7 days before the hearing).

3.2.6 If a final charging order is granted EK Services, in most cases, will be prepared to wait for a customer to sell their property and to be paid out of the proceeds of the sale. In some cases, EK Services will not be prepared to wait for the proceeds of

sale and will apply to the court for a hearing for an 'Order for Sale'. It is up to the court to decide whether to make an order for sale or not.

### **3.3 Use of solicitors**

3.3.1 EK Services will refer appropriate cases to their Legal teams and may also use Solicitors to undertake this work. Solicitors will be appointed to carry out proceedings on EK Services' behalf.

3.3.2 The Solicitors are fully authorised to deal with all matters connected with the Charging Order process from the issue of a Judgment to dealing with contested matters.

### **3.4 Considerations for using Charging Order proceedings**

3.4.1 EK Services will use charging order proceedings when alternative methods of recovering arrears have all been explored and have either failed or are inappropriate.

3.4.2 EK Services will consider using charging order proceedings under the following circumstances (this list is not exhaustive);

- Where overall arrears exceed £1,500 (or a lower limit of £1,000 for Council Tax purposes);
- Where the property is currently for sale voluntarily and a Charging Order is used as a way of securing the arrears agreement with EK Services;
- Where the property is owned by a customer who resides outside of the UK;
- Where a customer, as a result of age, severe mental illness or serious learning difficulties cannot deal with their affairs;
- Where it is not appropriate to conduct a means enquiry for committal proceedings and all other methods of recovering the arrears have failed;
- Where charging order proceedings are considered the most effective method of collection.

### **3.5 Information gathering and file preparation**

3.5.1 As part of the decision making process when considering whether Charging Order proceedings are appropriate in an individual case, officers are required to undertake

the same checking processes outlined in paragraph 2.6.1. In all cases, without exception, each appropriate method will be formally documented and recorded on file.

## **4.0 Alternative methods for Enforcing a County Court Judgment**

4.1 Once EK Services have obtained a County Court Judgment against a customer, there are other methods, other than Insolvency and Charging Order proceedings that can be considered to enforce the judgment;

- 'Warrant of Execution' – empowers a High Court enforcement officer / Enforcement Agent to attend a customer's address to take goods to sell at public auction;
- 'Third Party Debt Order' (also referred to as a 'Garnishee Order') – A customer is stopped from taking money from his/her bank or building society account and the money owed to EK Services is paid directly to us from the account;
- 'Attachment of Earnings' – Money is deducted from the customer's wages to pay the arrears.

4.2 EK Services has the discretion to decide the appropriate method of enforcement action to take. This will depend largely on what assets the customer owns, his/her income and the customer's personal circumstances.

## **5.0 Authorisation**

5.1 A recommendation for EK Services to begin Insolvency or Charging Order proceedings will be made by Council Tax/Business Rates Officers/Senior Council Tax Officer (Special Debt) and in all cases the file will then be referred to the Council Tax Team Leader for approval to proceed.

## **6.0 Reporting Arrangements**

6.1 EK Services Officers will record the progress of all Insolvency and Charging Order cases and produce a quarterly report.

## 7.0 Equalities Statement

EK Services are committed to delivering a service that is accessible and fair to all of the communities that we serve. We will ensure that all people are treated with respect and dignity.

The Equality Act 2010 sets us an “Equality Duty” to:

1. eliminate discrimination, harassment and victimisation;
2. promote equality of opportunity between different groups in the community; and
3. foster good relations within the local community

We give careful consideration to equality issues in our new and existing policies, strategies and services to see what effect they will have on different groups within our communities, including those with protected characteristics.

The protected characteristics covered by the Equality Duty are:

- age;
- disability;
- marriage and civil partnership (but only in respect of eliminating unlawful discrimination);
- pregnancy and maternity;
- gender reassignment;
- race – this includes ethnic or national origins, colour or nationality;
- religion or belief – this includes lack of belief;
- sex (gender);
- sexual orientation.

We also recognise that socio-economic status can be a significant barrier to equality of opportunity.

We identify potential consequences for these groups and ensure any negative impacts are eliminated or reduced. We also identify opportunities to eliminate discrimination and promote positive relations between groups and throughout our communities.

## **8.0 Policy Review**

- 8.1 This policy will be reviewed on an annual basis in order to ensure it remains valid, effective and relevant.

### **Appendix 1 Insolvency Services guidance - “Guide to Bankruptcy”**

<https://www.gov.uk/government/publications/guide-to-bankruptcy/guide-to-bankruptcy>