

FOI number: **HBC\_FOI\_20200286**  
Date FOI Received: **20/04/2020**  
Department: **Council Tax**  
Title: **Court applications for Council Tax Liability Orders**  
Description: **Council's exercise of discretion when issuing summons to appear before the court due to outstanding council tax.**

**Request: (As Redacted sent by requestor)**

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 Hertsmere 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)

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

**Response: (Response as Redacted sent by service)**

1. We will always listen to a resident if they contact us before the summons is issued and would use our discretion as to whether or not to proceed
2. Each case is decided on its own merits but factors such as illness, disability, sudden drop in income as well as issues around the property are all taken into account.

If you have any queries about the processing of your request then please do not hesitate to contact me. Further information explaining the Council's process for responding to information requests together with a complaints/appeals procedure is available in our reception or via our website at:

<https://www.hertsmere.gov.uk/Your-Council/Official-Publications--Guides--Policies/Access-to-Information.aspx>

The Information Commissioner oversees the application of the Freedom of Information Act. You may contact the Information Commissioner at:

Information Commissioners Office  
Wycliffe House, Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Telephone: 01625 545700  
Website: [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

Please include the above reference number on all correspondence related to this request.

Thank you for your request.

Kind regards

**Information Services**

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