



## Revenues and Housing Support Services Recovery Policy

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## Introduction

- 1.1 For Local Authorities responsible financial management is critical to enable the delivery of core service efficiently and sustainably. We have a duty to ensure that income is maximised and all monies are collected effectively for the benefit of our preceptors, residents and tax payers. We want to ensure that we pursue robust yet fair collection and enforcement action that takes into account the vulnerabilities of some residents and provides support to residents and businesses to prevent problematic debt where possible.
- 1.2 Effective debt management is crucial to the success of any organisation. It is essential that this authority has clear policies and procedures to manage the recovery of debt. This policy has been designed so that the Council can achieve its aim to maximise income collection and minimise levels of debt by the most fair, efficient and cost effective means whilst identifying and providing support for our most vulnerable debtors

## Aims

- 2.1 The aims of this policy are to:
  - As appropriate, identify support for the management of multiple debts owed to the Council, ensuring that customer's circumstances are taken into consideration
  - Apply best practise to debt collection
  - Maximise revenue through collection

## Scope

- 3.1 The collection and/or debts involved primarily within this policy are:
  - Council Tax
  - Non Domestic Rates (NDR)
  - Housing Benefit Overpayments
  - Council Tax Support
  - Housing Rent in Advance/Rent Deposit Scheme
  - Sundry Debt (Commercial Waste)
- 3.2 The Revenues and Housing Support Service will seek the most appropriate and financially advantageous means of maximising the council's revenue. This policy contains information about how we will deal with customers through each stage of the recovery process. It is designed to ensure that we treat all customers fairly and consistently whilst maximising opportunities to collect the revenue owed to the council.

## Policies – The Common Denominator

- Every demand/invoice for money will be correctly addressed to the person who is liable to pay it.
- Demands/invoices will wherever possible, be issued as soon as practicable.
- The Council will attempt at all times to use the most appropriate and effective method of debt recovery in order to maximise income.
- The Council will encourage the most cost effective payment methods with the emphasis being on unmediated electronic means where possible. Unmediated in the context of electronic payment methods means a method of payment that requires no human intervention by Officers of the Council to achieve its crediting to the account in question.
- Equality and diversity considerations will be taken into account in accordance with the Council's Equal Opportunity Policy. Specifically staff seeking to recover debts will have regard to ensuring information is accessible through such means as, translation, larger print versions or sign language, as appropriate to the needs of the customer.
- Where the potential for a statutory benefit or discount exists in relation to the debt, efforts will be made to make the customer aware of such opportunities and they will be assisted and encouraged to apply for these.
- All notices issued by the Council will comply with corporate style guidance and be readily identifiable as being from the Council.
- Where either national or local performance indicators exist the Council will strive for top quartile performance and will publish its actual performance against these targets annually.
- The Council welcomes the involvement of welfare agencies where authorised by the customer in connection with debts due to the Council, and recognises the benefits that these organisations can offer both to the customer and the Council in prioritising payments to creditors and in maximising income available to the customer.
- The Council supports the provision of advice from external agencies and will work in conjunction with them, where the law allows.
- In cases of multiple debts there must be close liaison between services. Multiple debts are where the customers have significant debts in more than one service area; for example, Business Rates and Trade-waste. Such cases can present problems in determining the relative priority of the individual debt for both the customer concerned and the officers preparing settlement. In such cases officers

are expected to liaise and agree an appropriate means of co-ordinated recovery which reflects these policy aspirations together with the need to balance repayment profiles across all debts due to the Council.

4.1 The Council recognises that prompt recovery action is key in managing its debt and maximising income. The Council therefore aims to:

- Regularly monitor the level and age of debt
- Set clear targets for the recovery of debt
- Have clear written procedures and policies
- Set priority for specific areas of debt and assess recovery methods to ensure maximum recovery
- Regularly review irrecoverable debts for write-off

## Principles of Recovery

5.1 The Council will follow the principles outlined below

- Our action will be proportionate
- Our approach will be consistent
- Our actions will be transparent

Additionally our intention will be to be firm and fair, and our manner will be courteous

5.2 Proportionality: Proportionality allows for a balance to be struck between the potential loss of income to the Council and the costs of recovery.

5.3 Consistency: Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council's aim to achieve consistency in:

- The advice the Council gives
- The use of its powers
- The Recovery procedures used

The Council recognises that consistency does not mean simple uniformity. Officers need to take account of many variables such as:

- The social circumstances of the customer
- The customers payment history
- The customers' ability to pay

5.4 Transparency: Transparency is important in maintaining public confidence. It means helping people to understand what is expected of them and what they should expect from the Council. It also means explaining clearly the reasons for taking any recovery

action. Communication should be in plain English, and large print or translation versions should be made available to customers upon request.

With the exception of Business Rates and Council Tax an opportunity must be given to discuss what is required to comply with the law before formal recovery action is taken. A written explanation must be given of any rights of appeals against formal recovery actions either before or at the time the action is taken.

## **Strategic Principles**

- 6.1 To maximise income collection and minimise levels of debt by the most fair, efficient and cost effective means whilst identifying and providing support for our most vulnerable debtors.
- 6.2 In order to achieve this we need to adopt a set of principles within our service delivery to debt management:
  - Understand our Customers
  - Make payment easy
  - Use fair and robust collection
  - Prevent financial hardship
  - Better communication with our customers
  - Support for businesses
  - Good housekeeping
  - Identify and support vulnerable customers
  - Operate a zero tolerance policy in relation to fraud

Details of how we will achieve these are within the strategy document in Appendix 7.

## **Vulnerability**

- 7.1 Council officers should at all times use their professional judgement when dealing with vulnerable customers; in particular where the customer appears:
  - To be severely mentally impaired or suffering severe mental confusion
  - To have young children and severe deprivation is evident
  - To be heavily pregnant and there are no other adults in the household
  - To be in mourning due to recent bereavement of a close family member
  - To have difficulty communicating due to profound deafness, blindness or language difficulties. In these cases arrangements must be made for provision of the appropriate support in terms of a signer or translation service, for example
  - To have a severe long term sickness or illness, or is terminally ill
  - To appear to be vulnerable in any other way

7.2 Often vulnerability doesn't affect all areas of a person's life. For example, dealing with other day-to-day activities may not cause any problems, but dealing with debt(s) or money some customers may struggle. When we refer to a person as being 'vulnerable' we are not looking to label that person. As a Council we just want to make sure we are giving the right support in order to help our customers.

## **Write offs**

- 8.1 This is in respect of council tax, NDR, Housing Benefit, Council Tax Support only. Those Housing and/or Trade-waste debts where recovery action has been unsuccessful would be referred back to the budget holder to decide what cause of action to take.
- 8.2 An integral part of debt recovery is the effective management of irrecoverable debts to ensure that resources are applied efficiently to the collection of monies outstanding which can reasonably be expected to be collected.
- 8.3 It is good practise to identify and write off unrecoverable debts. This enables the Council to use resources to their maximum benefit.
- 8.4 Debts will normally only be considered for write off where the account is closed and there is no recurring debt. Only in exceptional circumstances will amounts on live or on-going accruing debt accounts be considered. Such cases must demonstrate that further recovery action will not achieve collection of the debt.
- 8.5 It is not possible to list every scenario which could make a debt suitable for write off; however Appendix 7 shows the main reasons why debts become irrecoverable and how such debts will be managed.

## Appendix I

### Council Tax and Non Domestic Rates

Council Tax is payable by the vast majority of adults who are resident in the district. Each property is placed into one of eight Council Tax bands (A-H) based upon the market value of the dwelling in 1991. The Council administers the scheme and collects the tax.

There is a vast amount of work involved in establishing and assessing liability to Council Tax as there are many different ways in which the charge can be reduced.

Non Domestic Rates (NDR) are payable by businesses. The Council collect the rates on behalf of Government. The amount a business pays is dependent upon the rateable value of the property which is determined by the Valuation Office Agency (VOA). A re-valuation normally happens every 5 years.

Once liability has been assessed and the level of charge established and the Council Tax payer or Rate payer fails to pay in accordance with the demand notice or bills, there are various options available to enforce payments.

At the beginning of each financial year, every Council Tax and NDR payer has a right to pay their annual bill in 10 monthly instalments, these monthly instalments run from April to January. They can also elect to pay in 12 monthly instalments (April to March) or in one lump sum (April).

Payments are currently accepted by:

- Direct Debit
- Standing Order or Bank Giro
- Via Bank or Post office Counter
- BACS and Bank Transfer
- Cheque or Postal Order
- Cash
- Debit and/or Credit Cards
- Deductions from wages, pensions and Councillor allowances
- Deductions from some welfare benefits (Council Tax only)

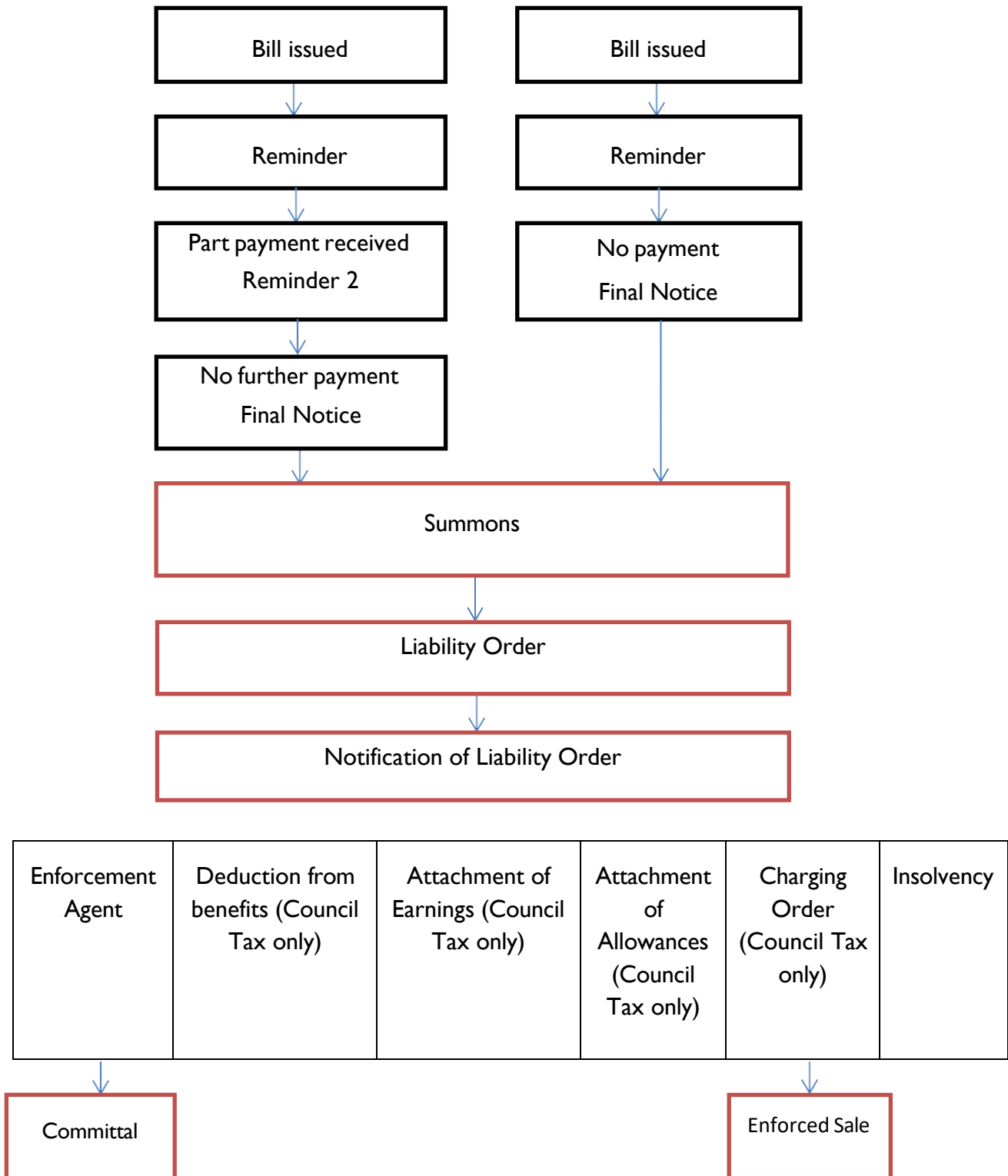
The Council offers its customers the following payment dates:

1<sup>st</sup>, 7<sup>th</sup>, 14<sup>th</sup>, 20<sup>th</sup> and 25<sup>th</sup> of the month for Direct Debit payers.

The Council appreciates that Direct Debit is the most cost-effective way to collection Council Tax and Business Rates and every opportunity is taken to promote this method of payment. Each account converted from paying by a non-automated form of collection will realise savings for the Council, as there should not be a need to take recovery action.



## Recovery Process



## **Reminder**

A reminder may be issued as early as the day following the date upon which the missed payment was due. To comply with the law, reminder notices must provide a further 7 days in which to make payment to bring the instalment in arrears up to date, or 14 days to clear the full account balance.

The Council recognises that issuing notices the day after payment becomes due could have a negative effect on the customer's perception of the Council, as it would target people who pay, but may be slightly late. These notices will therefore be issued at least 9 days after an account falls into arrears. This timescale provides for those who may pay late without delaying recovery action against those not paying anything.

If a Council Tax payer brings their payments up to date on receipt of a Reminder Notice but then again fall into arrears, they will receive a further notice (Reminder 2); however, if they fail to pay following a reminder notice, a Final Notice will be issued.

NDR payers have two opportunities to bring their accounts up to date with the issue of a Reminder Notice on the first default and a Final Notice on the second default.

## **Final Notices**

Final Notices are issued at least 9 days after the last notice where arrears still exist. The Final Notice cancels the tax payer's right to pay by instalments and requests payment of the total balance within 7 days.

If the payer ignores the Notice, but continues to pay their monthly instalments, they will not avoid the issue of a Summons, as the Legislation states they have lost their right to pay by instalments.

## **Summons**

If the customer fails to adhere to the Final Notice, the Council will summons them to the Magistrates Court and make an application for a Liability Order. Without this Order, the Council cannot take further enforcement action to collect the debt and protect the Council's interests. However, it is recognised that to make effective use of this recovery tool, a Summons will not be issued where:

- The balance is equal to or under the value of the summons cost;
- There is a Council Tax Support application registered;
- There is uncertainty over a current address;
- The customer has died;
- An appeal to the Valuation Tribunal is outstanding

Summons will be issued at least 18 days after the Final Notice, where there remains a balance outstanding. Costs for the issue of the Summons are added to the account.

The Council will withdraw the Summons on the following grounds:

- Full payment has crossed with the issue of the Summons
- The Council is in error
- There is evidence of long term sickness, serious illness, frailty or vulnerability
- There has been a recent death of a close relative
- Mail has been returned as 'gone way'

### **Liability Orders**

Application will be made to the Magistrates Court for the issue of a Liability Order at least 14 days after the issue of the summons where:

- There is a summonsed balance outstanding
- The case has not been adjourned to a later date
- The Summons has not been withdrawn

Application to the Magistrates Court for the issue of a Liability Order will not be made where:

- The customer has died
- The Summons has been withdrawn
- It has been agreed that the matter will be adjourned
- Correspondence is held which could result in a reduction of liability
- A relevant High Court case is outstanding
- Mail has returned as 'gone away'

Where only the Summons cost remains outstanding the Council may not consider it to be appropriate or cost effective to pursue collection. However, where payment of a summons is received without costs a letter will be issued to the customer advising them that the costs remain unpaid and that the Council will continue with the application for a Liability Order if payment of the costs is not received. A decision to pursue collection will be decided on an individual basis, having regard to the circumstances and history of the account.

A Liability Order gives the Council various powers to enforce payment. It is the Council's intention to make effective use of these powers having regard to maximising collection, but giving consideration to the customer's financial circumstances.

A Liability Order notification letter will be issued by the Council within 7 working days of the Liability Order being granted where no alternative method of collection has been implemented. It will include a notice of the statutory enforcement fees. For Council Tax debts a financial questionnaire will be used for completion and return.

The financial questionnaire is used to obtain information as to the customer's financial situation and to prioritise the appropriate method and level of payment in order to maximise collection without causing severe financial hardship.

## **Withdrawing Costs**

In the majority of cases payment of the total balance including costs will be pursued as the Council recognises this is valuable income to the Council. However, on occasions, it may be appropriate to consider withdrawing costs where:

- Full payment has crossed in the post with the summons
- The debt outstanding is less than the costs due to entitlement to benefit or adjustment to liability
- Pursuing payment of costs causes severe financial hardship
- Payment history shows that payments are usually made on time but personal circumstances have resulted in late payments (ie: illness, disability, bereavement etc)
- The customer has passed away

Where the recovery action has reached the Enforcement stage and/or beyond to committal proceedings, the Council will ensure that the costs are not withdrawn except where the following exceptionable circumstances exist:

- The defaulter absconds and tracing enquiries are unsuccessful
- Information is received, which, had it been received earlier, would have prevented recovery proceedings from being taken
- Liability is cancelled

## **Post Liability Order Payment Arrangements**

Arrangements can be made to discharge the debt at any time throughout the recovery process, and can therefore be agreed in the intervening period between the issues of the Summons and the Court Hearing. However, it is important to emphasise that the customer has a right to a fair trial and the customer should under no circumstances be prevented from attending the Court Hearing. It is their legal right to do so. If an acceptable arrangement is made with the Council before the Court Hearing, the application for the Liability Order will still proceed but no action will be taken to enforce the Liability Order unless there is a default on the payment arrangement. The award of a Liability Order also involves further costs being awarded to the Council, and any arrangements made before or after the hearing will take those costs into account,

These arrangements will be based on the following criteria:

- The customer's ability to pay
- The customer's commitment to paying
- The customer's payment history
- The debt will be paid within the financial year or if unable to discharge within the financial year the arrangement will be reviewed every 6 months
- Whether other arrears of Council Tax and NDR exist and what arrangements are in place for collecting these debts
- Any other Council Tax or NDR arrears are taken into account to ensure the payment arrangement is realistic and maximises the income to the Council

All payment arrangements will ensure:

- Priority is given to the current year debt (where no recovery action has been taken)
- The oldest debt becomes priority after recovery action has been taken or the current year debt has been cleared
- Costs are included within any arrangement
- Direct Debit is offered and encouraged
- The overall total debt is reducing
- An alternative method of collection would not discharge the debt more efficiently (ie Attachment of Earnings Order)

In order to maximise collection, we will continue to enter into Special Arrangements throughout the recovery process and customers will often enter into a number of different agreements before the debt is cleared. This is particularly relevant where a low payment arrangement is agreed due to the short term financial difficulties experience by the customer.

The Council can only enter into a Special Arrangement following communication from the customer, normally in the form of a completed financial questionnaire, or following other proactive recovery initiatives. If the customer does not contact the Council to discuss their arrears, any information held on file will be used to adopt an automated method of collection such as an Attachment of Earnings Order when the place of employment is known or direct deductions from other welfare benefits when it is known that the customer is in receipt of a benefit.

In the absence of a Special Arrangement recovery action will be taken in the following order of priority:

- Attachment of Earnings Order
- Deductions from benefits
- Attachment of Allowances
- Enforcement Action
- Charging Order
- Insolvency
- Committal
- Enforced Sale

If the customer fails to contact the Council, or if there is no information held on file to enable alternative recovery action being adopted, the debt will be passed to the Enforcement Agent for collection.

## **Attachment of Earnings Order (AOE)**

This enforcement tool is available to collect Council Tax debts only and allows the Council to instruct the customer's employer to make deductions directly from their wages based on the level of earned income. Deductions are made in accordance with the Council Tax (Administration and Enforcement) Regulations 1992, as amended.

This can be a contentious method of collection as customers are often reluctant for their employers to be made aware of the debt, and for the Council to be paid direct from their wages. However, this alone is not a good reason to cancel this method of collection. When determining whether or not to stop the Order the following factors will be taken into account:

- The permanence or otherwise of the customer's employment: The customer may be in temporary employment and the income from the Order is minimal. The employer may threaten to cease the customer's employment due to the Order and there may be a real risk of the customer losing their job
- Previous Attachment Orders: If a previous AOE for the same debt has previously been cancelled in favour of a voluntary payment arrangement which has subsequently failed, there is insufficient reason to again cancel the current AEO
- Financial situation: if the customer's income and expenditure is such that they will experience extreme hardship if the AEO would continue. For example, if they have a young family or other extenuating circumstances, it may be appropriate to cancel the AEO in place of a realistic payment arrangement.

Before deciding to stop an AEO the Council will request from the customer a full and detailed statement as to their income and expenditure to enable an informed and balanced decision to be made.

## **Attachment of Allowances**

An Attachment of Allowance provides for deduction of forty percent to be made from the allowances paid to an elected member to clear a Liability Order under the Council Tax (Administration and Enforcement) Regulations 1992, as amended. This enforcement tool is available to collect Council Tax debts only.

The regulations allow for deductions to be made from allowances due to any elected member of either the bill or precepting Authority. Having been served with such an order the Council is required to make deductions and must make a notification within 14 days should the member cease to be an elected member of their Authority

## **Deductions from Benefits**

This enforcement tool is available to collect Council Tax debts only and allows for the Council, where customers are in receipt of one of the following benefits to request that the Department for Work and Pensions (DWP) make deductions:

- Job Seekers Allowance
- Income Support
- Employment Support Allowance
- Pension Credit
- Universal Credit

The rate of deduction is stipulated by the DWP.

The Council makes full use of this enforcement tool as we are guaranteed to receive regular payment, all be it, at a relatively low rate. No other form of enforcement action can be taken against individuals named on the Liability Order whilst deductions are made.

### **Enforcement Action**

This option allows County Court Certificated Enforcement Agents (previously known as Bailiffs) to remove and sell certain goods owned by the customer (within England and Wales). Fees are chargeable and specified within the Taking Control of Goods Regulations 2013 (TCOG). Accounts in arrears are passed to the Enforcement Agents where a balance remains outstanding and no payment arrangements have been agreed. Alternatively, accounts are passed to the Enforcement Agents on the failure of Special Arrangements or alternative enforcement methods.

Cases will not be passed to the Enforcement Agents where:

- There is outstanding correspondence which has not been responded to
- There is an outstanding benefit application which is current but not finalised
- There is an outstanding application for exemption, status discount, disabled band reductions, or single person discount which is currently unresolved
- There is uncertainty over the taxpayer's current residence

The primary aim of the Enforcement Agent should be to collect the full payment of the debt. If they are unable to do this because of financial or personal circumstances of the customer, arrangements can be entered into if the payments equate to:

- The total debt being discharged within the current financial year
- If unable to discharge within the financial year a realistic repayment arrangement is agreed

The only exception to the above will be when the customer is in receipt of a benefit and the Council is not able to deduct from the benefit directly. In these circumstances an arrangement equal to the DWP statutory amount of deduction would be considered

### **Enforcement Agents**

Where the Council employs the services of external Enforcement Agents, all companies acting on behalf of the Council must adhere to regulations set out in TCOG.

A table of fees and charges that can be raised by the Enforcement Agents is shown in Appendix 5.

## **Charging Orders**

Where Liability Order have been granted for an aggregate amount of £1,000 or more it is possible to apply to the County Court for a Charging Order to be placed upon the customer's property until the debt is discharged or the property is sold. Consequently, the Council may have to wait a considerable period of time before any payment is actually obtained.

Generally, making an application for a Charging Order will only be considered when other methods of recovery have proved unsuccessful and there is sufficient information available to recommend this course of action. This enforcement action is only application to Council Tax debts.

A Charging Order only acts as a charge on the customer's property. It is the Council's intention to apply and enforce Charging Orders where the debt is large enough to meet legislative criteria (£1,000) and where there is on-going default.

## **Insolvency**

Where a customer owes a debt that is over a prescribed amount (currently £5,000), insolvency action may be instigated. There are two types of insolvency action that may be taken which are personal (Bankruptcy) and company (Liquidation).

Where the customer is made insolvent or subject to a voluntary arrangement any NDR or Council Tax debt due to the Council prior to the date of the insolvency will be included and claimed in full within the insolvency. This effectively stops any alternative recovery action being taken to recover the debt.

If a Final Notice or Summons has been issued the full balance outstanding should be requested on the proxy form as the right to pay by instalments has been lost at this stage and the full balance is legally due.

Where the NDR or Council Tax liability is in joint names and only one of them has been made Bankrupt the Council can still pursue the second named person for the outstanding liability; however, consideration should be given to the likelihood of the Council recovering the debt from that person. If they are unlikely to be able to discharge the debt the debt should be submitted under the Bankruptcy Order.

Such proceedings would only be instigated against customers who:

- Owe in excess of £5,000 and have failed to make any realistic repayment arrangement
- Fall into the category of 'won't pay' rather than 'can't pay'

Before any such action is taken a full information gathering exercise will be undertaken to assess the cost involved for the Council against the likelihood of repayment.

Insolvency proceedings are fairly expensive to undertake with fees having to be paid to the County Court. Whilst these fees form part of the sum due to the Council from the



customer, there is no guarantee of being able to recoup either the fees or the debt from the insolvency.

Due to the nature of this course of action, no insolvency proceedings will be instigated with the prior consultation with the relevant portfolio holder and the authorisation and approval of a Service Manager and Legal Executive.

Service Managers: Group Manager, Business Service Manager, Revenues Manager

### **Commitment to Prison**

Where it has not been possible to collect the debt through any of the remedies detailed in this policy, the customer will be summonsed to court where any enquiry will be made as to their means and conduct with regard to the non-payment.

Making such an application for a customer to be sent to prison for non-payment must continue to be a last resort and therefore, all other alternative recovery action should be considered right up to the Court hearing date.

The Council will carefully consider the appropriateness of each case taking into account the individual personal and financial circumstances of the customer in consultation with the relevant portfolio holder.

The Council is allowed to charge statutory costs to cover the issue, service and execution of Committal Summonses and Arrest Warrants. These costs are recoverable from the customer.

At the hearing the Court is required to conduct a full means enquiry to determine whether the customer's failure to pay is due to either 'culpable neglect' or 'wilful refusal' within the relevant period.

Any case recommended for committal action must be authorised by a Service Manager in partnership with a Legal Executive as the committal process is very labour intensive and therefore a costly recovery tool with varying degrees of success.

### **Enforced Sale**

There are three stages within this process:-

1. **Interim Charging Order:** an interim charging order can be secured generally without the debtor being present and once secured will be registered at the Land Registry.
2. **Final Charging Order:** once an interim Order is obtained the Council can then apply for a final Charging Order. The debtor may object to this order, however, the burden of proof is on the judgement debtor to show why such an order should not be made.
3. **Order of Sale:** in certain circumstances the Council may apply to the Court for an order of sale. The Court has unfettered discretion on whether or not to make an Order of Sale and will take into account a range of factors, such as:

- The size of debt and length of time it has been outstanding
- Likelihood of the debt being satisfied by the proceeds of sale
- Whether the Local Authority is unlikely to recover the debt by using other methods available
- That the request is reasonable and proportional under Article 8 of the European Convention of Human Rights Act 1998

## Appendix 2

### Housing Benefit Overpayment

Overpayments can be a sensitive issue for claimants. This is because overpayments occur when a change of circumstances affects the benefit entitlement causing a reduction or cancellation. The claimant will be faced with a requirement to repay an overpayment of Housing Benefit at the same time as having a reduced income.

At all times the claimant shall be notified of the overpayment by a letter of Notification. These shall be dated, giving a clear explanation of how the overpayment occurred, the period of the overpayment, how it is to be recovered, the right to a written statement of reasons and the right of appeal ( provided for by Schedule 9 to the Housing Benefit Regulations 2006).

The decision to recover an overpayment and who to recover the relevant monies from is laid down in regulations and is covered by extensive case law. Recovery can be sought from the claimant, the person to whom the benefit was paid (including landlords and/or agents) or from anyone who contributed to the cause of the overpayment.

### Recovery from On-going Benefit

A claimant is required to declare every change in their circumstances such as an increase in income or changes within the household.

When notification is received of a change in the claimant's circumstances the claim will be reassessed. This can produce both under and overpayments. It is standard practise to offset all underpayments against any overpayments for the same period.

Where the claimant is still entitled to Housing Benefit an overpayment can be recovered by reducing future payments by an amount set by the Department for Work and Pensions (DWP). This amount is increased on 1 April each year. This is the most cost effective and efficient method of recovery.

The regulations prescribe a specific level of instalments for recovery of an overpayment from on-going Housing Benefit entitlement. (Regulation 101 of the Housing Benefit Regulations 2006, and Regulation 82 of the Housing Benefit (Person who have attained the qualifying age for state pension credit) Regulations 2006).

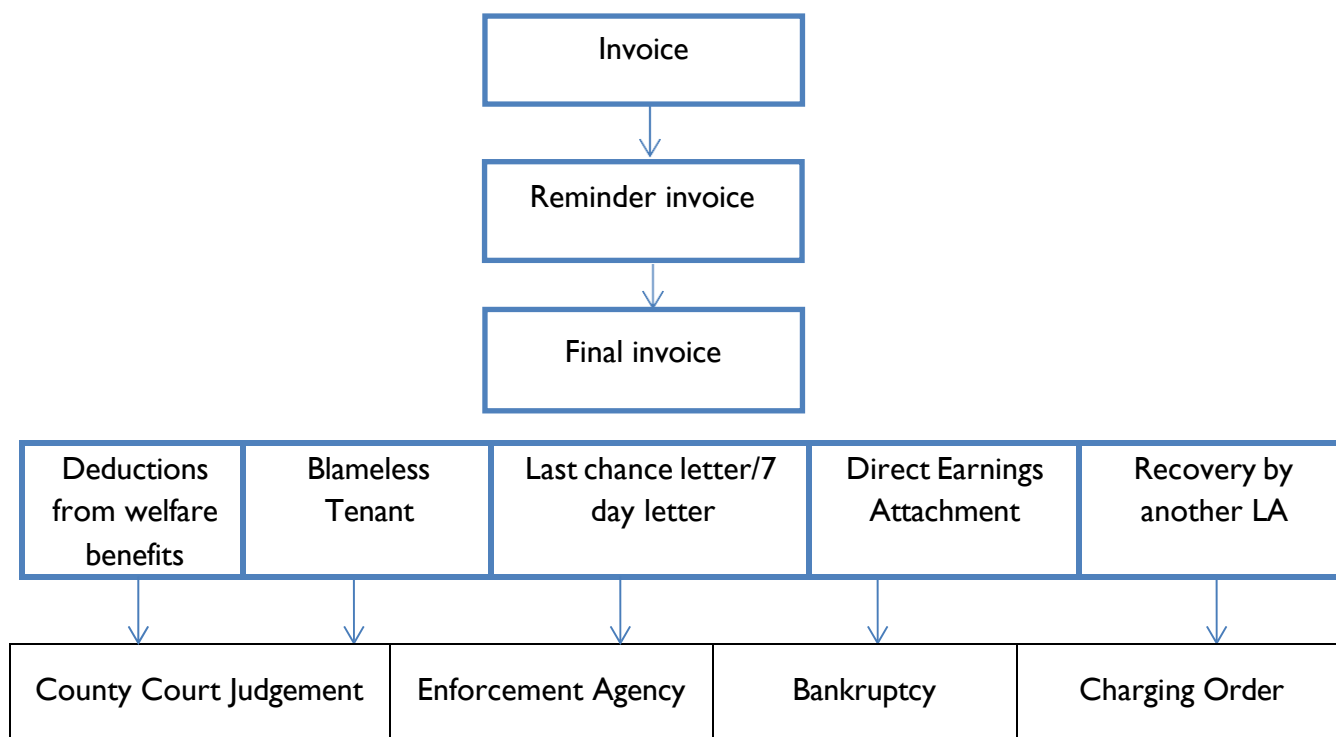
Overpayments can also be recovered from a partner or an ex-partners claim providing they were a couple and living together at the time the overpayment occurred.

## Recovery through Sundry Debtors

When the overpayment cannot be collected from on-going Housing Benefit a Sundry Debt invoice will be raised and issued to the customer.

If no appeal is made in respect of the overpayment within 4 weeks of the invoice being issued recovery action will commence.

### Recovery Process:



### Reminder/Final Invoices

Reminder and Final Invoices can be issued as early as the day following the date upon which the missed payment was due. The Council recognises that issuing invoices the day after payment becomes due could have a negative effect on the customer's perception on the Council, as it would target people who pay but may pay slightly late. These notices will therefore be issued 14 days after an account falls into arrears.

Customers who contact the Council on receipt of a Reminder or Final Invoice will be requested to make full payment on the outstanding invoice.

Customers who are unable to pay in full will be given the opportunity to make an arrangement. The arrangement will be based on the following criteria:

- The customer's ability to pay
- The customer's commitment to pay

- The customers payment history
- The debt will be paid in a set period
- Arrangements will be reviewed every six months by the completion of a new financial questionnaire
- The payment arrangement is realistic and maximises the income to the Council

All payment arrangements will ensure:

- Priority is given to the oldest debt
- Costs, if any are included in the arrangement
- Direct Debit/Standing Order is offered and encouraged
- The overall debt is reducing

A payment arrangement can be negotiated at any stage of the Recovery process.

### **Deductions from Welfare Benefits**

The Council may recover a housing benefit overpayment from a wide range of other welfare benefits. Recovery is undertaken in accordance with Regulation 102 and 105 of the Housing Benefit Regulations 2006, Regulation 83 and 86 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, and The Social Security (Overpayments and Recovery) Regulations 2013.

An overpayment can be recovered from the following welfare benefit:

- Income Support
- Job Seekers Allowance
- State Retirement Pension
- Employment Support Allowance
- Carers Allowance
- Maternity Allowance
- Industrial Injuries Allowance
- Universal Credit
- Disability Living Allowance
- Attendance Allowance
- Personal Independence Payment
- Widow(er)'s Benefit
- Bereavement Benefits

It can be applied for at any stage of the recovery cycle where they are in receipt of a prescribed benefit. Councils can recover debts that are more than 6 years old under this remedy as they are not restricted under the statute of limitations.

## **Blameless Tenant**

Recovery of Housing Benefit Overpayments can only be made from a landlord and/or agent in cases where they have received direct payments of Housing Benefit and would have been aware that an overpayment had occurred.

The Council requires a landlord and/or agent to complete and return a declaration form prior to them receiving Housing Benefit payments direct. The form states that they may be required to repay any overpaid Housing Benefit which has been paid to them on behalf of their tenant, if it is subsequently found there is no entitlement to the money.

Legislation also provides that recovery of an overpayment may be deducted from payments made to a landlord and/or agent in respect of another tenant's Housing Benefit. This is often referred to as 'blameless tenant' recovery. The Council must notify the landlord and/or agent which tenant's Housing Benefit was overpaid and who is the blameless tenant. The landlord and/or agent must treat the blameless tenant as having paid rent equal to the amount deducted.

## **Last Chance/7 Day Letter**

The Council can send an additional letter to the customer, or whoever recovery is being sought by, giving them a further opportunity to make an arrangement to repay the amount owed. This letter is not a legal requirement but an additional tool used to encourage customers to make contact.

## **Direct Earnings Attachment (DEA)**

Where the Council holds information of a debtor's employment the Council may apply to the employer for a DEA under part 6 of the Social Security (Overpayment and Recovery) Regulations 2013 and section 106A of the Housing Benefit Regulations 2006.

There is not a requirement to apply to the Court for such an attachment.

## **Recovery by another Local Authority**

If a customer has moved to another Authority's area and is in receipt of Housing Benefit, a letter will be sent to that Authority to request that they make deductions from the on-going Housing Benefit at an appropriate level. Any monies recovered by this method would be forward onto the Council to reduce the overpayment. It is not mandatory for authorities to recover the overpayment on behalf of the council but it is seen as good practise.

## **County Court Judgement**

A County Court Judgement (CCJ) is usually obtained once all other methods of recovery have been exhausted.

If the customer fails to pay on the receipt of a CCJ the Council may apply to the Courts for further enforcement action to be taken:

- **Order for Questioning:** The Court issues a writ/summons to the customer to attend a full means enquiry into their financial circumstances
- **Warrant of Execution:** The Council would request an enforcement officer to seize and sell goods belonging to the customer in order to satisfy the judgement debt and costs.
- **Charging Order:** The Council would apply for a charge over a customer's property and may take further proceedings to force a sale of the property
- **Third Party Debt Order:** This order attaches to the money in a customer's bank or building society account and is transferred to pay off the Judgement debt.

All stages of enforcement through the Court attract further costs/fees which would be added to the customer's outstanding debt.

### **Bankruptcy**

Housing Benefit overpayment bankruptcy proceedings may be taken against customer's whose overpayment is in excess of £5,000.

The consequences can be severe and such action should only be taken as a last resort.

Both County Court and Bankruptcy proceedings should be referred to the Council's Legal Department for consideration prior to any action being taken.

## Appendix 3

### Council Tax Support

Council Tax Support (CTS) is a local scheme available to Council Taxpayers who are on a low income. It reduces the Council Tax bill depending on the level of income, household circumstances and Council Tax bill.

The Council's scheme is for working-age customers. By working age we mean anyone aged between 16 and who has not reached the qualifying age for State Pension Credit or has attained the qualifying age and is also in receipt of income support, income based jobseeker's allowance or an income-related employment and support allowance.

For customers who have reached the age to claim State Pension Credit the Government's national scheme continues and no changes have been made.

Like Housing Benefit, Council Tax Support is means-tested. This means that the Council require details about customer's income and capital to work out how much discount is awarded.

Overpayments of CTS also referred to as excess CTS can be a sensitive issue for claimants. This is because CTS overpayments occur when a change of circumstances affects the CTS entitlement causing a reduction or cancellation. The claimant will be faced with a requirement to repay an overpayment of CTS at the same time as having a reduced income.

When an overpayment of CTS is identified and the claim is recalculated the customer will receive a notification letter detailing the new weekly CTS amount.

Any recoverable CTS will be posted to the customer's Council Tax account. This will force a recalculation of the account and an amended Council Tax bill will be issued giving new monthly instalments.

Collection and/or recovery will therefore continue in the normal manner of Council Tax as detailed in Annexe I.



## Appendix 4

### Housing Recovery/Sundry Debt (Commercial Waste)

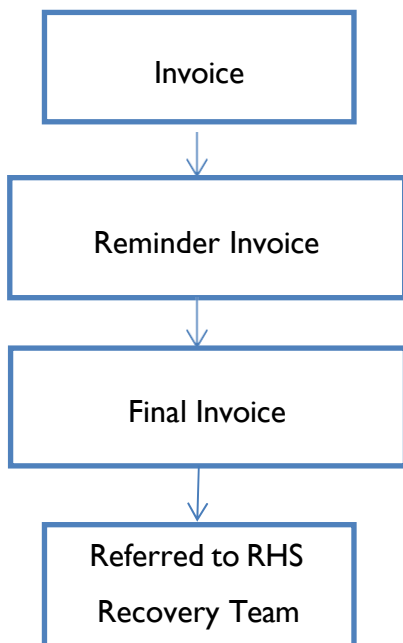
It is the Council's policy to recover all collectable debt owed to it and with this overall objective in mind this policy aims to:

- Maximise the collection of the Council's income
- Reduce the level of debt owed to the Council and its provision for bad debts
- Reduce the incidence of debt that cannot be collected
- Tackle any non-payment culture amongst customers

Housing and Commercial Waste debts are initially managed by the Accounts Receivable (AR) Team based within Cheltenham Borough Council. The later stages of recovery for these debts are referred to the Revenues and Housing Support Recovery Team after a final invoice has been issued.

This policy therefore supports the AR policy and gives added value to the Council's focus on debt recovery.

#### The Recovery Path:



## **Reminder/Final Invoices**

Reminder and Final Invoices can be issued as early as the day following the date upon which the missed payment was due. The Council recognises that issuing invoices the day after payment becomes due could have a negative effect on the customer's perception on the Council as it would target people who pay but may pay slightly late. These invoices will there be issued as follows:

- Reminder Invoice: 14 days after invoice sent
- Final Invoice: 28 days after the reminder was sent

14 days after the Final Invoice has been sent the debt is referred to the Revenues and Housing Support Services (RHS) recovery team.

The RHS recovery team will be proactive and utilise all recovery tools available to maximise recovery such as:

- Special arrangement repayment plans
- Tracing tools where customers have left the last known address
- Suspending or withdrawing the service (trade-waste debts only)

When the RHS recovery team are satisfied that all methods of recovery available have been exhausted the debt(s) will be referred to the service area budget holder to decide what further action should be taken, such as:

- Recovery through the County Court
- Insolvency Action
- Write-off

## Appendix 5

### Fees and Charges

	Non Domestic Rates	Council Tax
Summons Costs	£75.00	£65.00
Liability Order	£45.00	£45.00
Committal Summons	£240.00	
Charging Order	£110.00 plus disbursements and legal costs	
	Personal insolvency	Winding-up proceedings (Company)
Bankruptcy	£1,270 plus costs for serving documents	£1,880 plus costs for serving documents
Compliance Stage for each Liability Order issued	£75.00	
Enforcement Stage (if sum due exceeds £1,500 a further 7.5% is charged on balance)	£235.00	
Sale or disposal of Good (if sum due exceeds £1,500 a further 7.5% is charged on balance)	£110.00	
The costs of storing goods which have been taken into control and removed from premises	Dependant on locality and costs charged	
The cost of hiring a locksmith to gain access to premises when using reasonable force to enter them and to secure them	Dependant on locality and costs charged	
Deductions from benefits (Income Support, Job Seekers Allowance, Employment Support Allowance Pension Credit)	£3.70 a week	

Deductions from Housing Benefit	£11.10 a week £18.50 a week (if attributed to fraud)		
Penalties for failing to notify changes for Housing Benefit purposes (Civil Penalty)	£50.00		
Council Tax Support (Civil Penalty)	£70.00		
<b>County Court Judgement</b>	<b>Court fee</b>	<b>County Court Business Centre on-line</b>	<b>Solicitors costs</b>
Does not exceed £300	£35	£25	£50
£300 to £500	£50	£35	£50
£500 to £1,000	£70	£60	£70
£1,000 to £1,500	£80	£70	£80
£1,500 to £3,000	£115	£105	£80
£3,000 to £5,000	£205	£185	£80
£5,000 to £10,000	£455	£410	£100
£10,000 to £200,000	5% of claim	4.5% of claim	£100
Exceeds £200,000 or is not limited	£10,000	-	£100
Penalties for failing to comply with certain requirements in respect of Council Tax	£70.00 £280.00		
Direct Earnings Attachments (Housing Benefit)			
<b>Where earnings are paid weekly</b>			
<b>Amount of NET earnings</b>	<b>Deduction (% of NET earnings)</b>		
Less than £100	Nil		
Exceeding £100 but not exceeding £160	3		
Exceeding £160 but not exceeding £220	5		

Exceeding £220 but not exceeding £270	7
Exceeding £270 but not exceeding £375	11
Exceeding £375 but not exceeding £520	15
Exceeding £520	20
<b>Where earnings are paid monthly</b>	
Less than £430	Nil
Exceeding £430 but not exceeding £690	3
Exceeding £690 but not exceeding £950	5
Exceeding £950 but not exceeding £1,160	7
Exceeding £1,160 but not exceeding £1,615	11
Exceeding £1,615 but not exceeding £2,240	15
Exceeding £2,240	20
Attachment of Earnings (Council Tax)	
<b>Where earnings are paid weekly</b>	
<b>Amount of NET earnings</b>	<b>Deduction (% of NET earnings)</b>
Not exceeding £75	Nil
Exceeding £75 but not exceeding £135	3
Exceeding £135 but not exceeding £185	5
Exceeding £185 but not exceeding £225	7
Exceeding £225 but not exceeding £355	12
Exceeding £335 but not exceeding £505	17
Exceeding £505	17 in respect of first £505 and 50% of the remainder

<b>Where earnings are paid monthly</b>	
Amount of NET earnings	Deduction (% of NET earnings)
Less than £300	Nil
Exceeding £300 but not exceeding £550	3
Exceeding £550 but not exceeding £740	5
Exceeding £740 but not exceeding £900	7
Exceeding £900 but not exceeding £1,420	12
Exceeding £1,420 but not exceeding £2,020	17
Exceeding £2,020	17 in respect of first £2,020 and 50% in respect of the remainder

The above figures may be amended on an annual basis and in line with legislation changes as and when they arise.

Current figures as of financial year 2017/18

## Appendix 6

### Enforcement (Taking Control of Goods)

This code of practise outlines the way that internal Enforcement agents or external Enforcement agent companies collecting Non Domestic Rates (NDR) and Council Tax debts on behalf of the council should conduct themselves. It includes:

- The professional standards they must adhere to
- The procedures they must follow
- When it is inappropriate to take action

### Professional Standards

The Council and the enforcement agent company will ensure that all enforcement agents, employees, contractors and agents have an appropriate knowledge and understanding of all relevant legislation, case law and powers, and at all times act in accordance with them. The enforcement agent must comply with the principles of the Data Protection Act and any other relevant legislation.

Enforcement agents and employees, contractors and agents of the enforcement agent firm must be aware that they represent the Council in their dealings with debtors. They should at all times act lawfully and in accordance with the provisions of prevailing NDR and Council Tax legislation. They must act in a responsible, professional and courteous manner and be aware that their behaviour, appearance and attitude have a great influence on the success of the debt recovery process.

External Enforcement Agent firms must at all times:

- Hold up to date professional indemnity insurance, ensuring the fullest indemnity against legal proceedings resulting in compensation awards due to illegal or irregular actions. Details of such insurance must be provided to the Council on request.

The enforcement agent must be firm but polite and courteous at all times when dealing with the public. They must avoid being provoked by vexatious debtors. In the event of a breach of the peace occurring as a result of an enforcement agents visit, the Council must be debriefed of the circumstances as soon as practicable.

At all times, enforcement agents must carry:

- Their Enforcement Agents General Certificate issued by the County Court, which must be show when visiting a property to take control of goods.
- Written authorisation of the Council to be shown on request.

The enforcement agent must at all times make clear to the debtor the purpose of the visit and the fact that they are acting on behalf of, and as an agent of the Council. For Council

Tax matters visits to residential addresses must be made after 6am and before 9pm, with no visits on Sundays or bank holidays unless specifically agreed in writing in advance. Visits for NDR matters may be made to business premises at any time during their hours of opening.

The enforcement agent must hand to the debtor or leave on the premises documentation detailing costs incurred, the legislation relating to taking control of goods and any relevant guidance notes.

### **Taking Control of Goods**

This means entering a debtor's property and listing goods belonging to the debtor, or listing goods belonging to the debtor found on the public highway that may be removed and sold at auction with the proceeds being paid towards the amount owed to the Council and costs incurred by the enforcement agent. Only an enforcement agent properly vetted and trained by the authorised company and who is certified by the County Court may take control of goods in respect of liability orders on behalf of the Council.

Upon receipt of instruction to take control of goods, the enforcement agent company shall ensure that a visit is made to take control of goods only after any pre-arranged letter and telephony strategy has been unsuccessful. Where more than one liability order is held for a debtor, the enforcement agent, where practicable will attend the property for all liability orders at the same time, with only one enforcement fee being charged. Visits to debtor's premises must be made on different days and at different times of the day.

### **Arrangements to pay the debt**

If on attendance contact is made with the debtor, the enforcement agent should attempt to recover the amount in full immediately. If full payment cannot be made, the debtor should be given the opportunity to enter into a Controlled Goods Agreement. A Controlled Goods Agreement allows the debtor to keep the listed goods on their premises provided a suitable payment arrangement is agreed with the enforcement agent and is adhered to. The enforcement agent must explain to the debtor the terms of the Controlled Goods Agreement and the consequences of payment default, and leave a copy of the agreement with them. There must be no administration fees for entering into a payment arrangement.

Enquiries should also be made about possible eligibility for reliefs, discounts, exemptions or Council Tax Support and details of debtors who may potentially be eligible for any status should be obtained and passed to the Council.

Council Tax and NDR payment arrangements can be made at the Enforcement Agent's discretion over a period of up to 6 months, or to clear the debt within the financial year, whichever occurs sooner. The Council can intervene and direct the Enforcement Agent to extend a repayment period in exceptional circumstances.



## **When the Enforcement Agent should consider taking no action**

The enforcement agent should at all times use their professional judgement to refer a case back to the Council if they consider that, due to the personal circumstances of the debtor, it would not be appropriate to take control of goods. In particular, where the debtor:

1. Appears to be severely mentally impaired or suffering severe mental confusion
2. Has young children and severe social deprivation is evident (Council Tax only)
3. Disputes liability of claims to have paid, has applied for Council Tax Support, a discount or any other relief has not yet been granted
4. Is heavily pregnant and there are no other adults in the household (Council Tax only)
5. Is in mourning due to a recent bereavement of a close family member
6. Is having difficulty communicating due to profound deafness, blindness or language difficulties. In these cases arrangements must be made for the provision of the appropriate support in terms of a signer or translation service.
7. Is currently unemployed and provides proof that they are in receipt of Income Support, Job Seekers Allowance or Universal Credit and details are obtained of the debtors national insurance number in order to obtain a deduction from benefits (Council Tax only)
8. Has severe long term sickness or illness, or is terminally ill.
9. States that they have raised their case with their local councillor or Member of Parliament
10. Appears to be vulnerable in any other way.

The enforcement agent must also take no action if it appears that no responsible adult is present at the debtors address. If an adult is present, the enforcement agent must attempt to establish their identity. If the debtor unavailable the enforcement agent must ascertain when they will be available. No reference should be made to the nature or the purpose of their visit. The enforcement agent must be aware of the sensitive and confidential nature of this work and should take care to ensure that information regarding the debtor's circumstances is not passed on to, or discuss with a third party except those specified in the Taking Control of Goods Regulations. If children are present at the time of the visit the debtor should be encouraged to ask them to leave the room while the matter is dealt with. Any documents left at the premise when the debtor is not present must be left in a sealed plain envelope, clearly addressed to the debtor and marked strictly private and confidential.

## Removal of Goods

Before attending to remove goods, the enforcement agent must give notice to the debtor in accordance with the Taking Control of Goods Regulations and highlight the costs of removing the goods. However, if there are circumstances that indicate that by telling the debtor is may compromise their ability to remove goods (for example, if a company is about to go into liquidation, or the debtor is about to abscond) then an application must be made to the Court for permission to attend without giving the notice required. Such a decision and the reasons for the decision must be recorded and the Council notified.

Enforcement agents must not attend a Company Director's personal address when the liability order is not in his specific name, unless that address is the registered office or the trading address of the company.

In the event of the need to remove a debtor's goods, the enforcement agent must obtain the express permission of the Council before doing so unless this happens outside of normal working hours in which case the enforcement agent may conduct the removal if appropriate to do so.

For Council Tax debts, certain goods are protected under the Taking Control of Goods Regulations 2013 and must not be removed for sale by the enforcement agent. Only goods belonging to the debtor or a co-owner may be seized. Goods subject to 'hire purchase' cannot be removed.

The enforcement agent should not remove goods for sale unless it is anticipated that the sum realised will be sufficient to settle a reasonable proportion of the debt and the costs. However, in some cases, such as NNDR, the enforcement agent may still remove goods if it is anticipated that the debtor may be about to enter into an insolvency procedure.

Costs charged to the debtor should be strictly in accordance with the provisions of the Taking Control of Goods (Fees) and Regulations 2014.

Any goods removed must be transported and stored securely with due care and attention and the appropriate insurance cover must be in place.

The debtor must be notified of the place to which the goods have been removed to. If the debt is paid in full between removal and the sale of the goods the goods should be made available for collection by the debtor.

When the debtor's goods are removed and sold at public auction, the Council and the debtor must be provided with a full statement which:

- Lists the goods sold
- Lists the amount realised
- Lists the costs incurred, and
- Details the amounts subsequently outstanding or overpaid as appropriate

At least 3 unsuccessful visits must be made to the debtors address before the case is returned to the Council as unpaid. The visits must be made on different days and at different times and at least one of these visits should be made to the debtors address outside normal office hours. Documents other than prescribed documents issued to the debtor must be agreed with the Council and be in plain English. Documentation must be left at the property at each visit giving details of the date and time of the visit, the debt and charges to date and the name and contact details for the enforcement agent. Any documents left at the premises when the debtor is not present must be left in a sealed plain envelope, clearly addressed to the debtor and marked strictly private and confidential.

Where the enforcement agent is unsuccessful in their attempts to obtain payment or take control of goods and the liability order is to be returned to the Council, they must submit a report clearly showing that the person attending to take control of goods was unable (for whatever reason) to find any or sufficient goods of the debtor to take control of. The report must also give full details of the actions taken by the enforcement agent together with any details ascertained concerning the financial or person circumstances of the debtor.

If the debtor is no longer resident, the enforcement agent should make appropriate enquiries to ascertain the debtor's date of leaving and new address as well as details of any new occupier. This information must be referred back to the Council. The enforcement agent may visit and take control of goods at the debtor's new address.

Payment and payment schedules must be submitted to the Council at a pre-agreed frequency on the agreed day(s). The enforcement company must account for all monies received and provide a proper system for dealing with unpaid cheques and recalled credit/debit card payments.

Monthly statistical reports in the agreed format must be submitted or made available to the Council.

It is the Service Managers responsibility for the operation and monitoring of this code and for resolving any complaints with the debtor.

Any complaints received will be dealt with in accordance with the Council's corporate complaints procedure.

## Appendix 7

### Write-offs

An integral part of debt recovery is the effective management of irrecoverable debts to ensure that resources are applied efficiently to the collection of monies outstanding which can reasonably be expected to be collected.

It is good practise to identify and write off irrecoverable debts. This enables the Council to use resources to their maximum benefit.

### Policy Aims

1. There are consistent guidelines and procedures to follow
2. Provide a framework to write off debts once every possible recovery process has been exhausted
3. Strike a balance between protecting the Council's financial position and making sure anti-poverty issues are addressed
4. Write offs are carried out in accordance with the Council's Constitution and Financial Rules

### Policy

Debts will normally only be considered for write off where the account is closed and there are no recurring debts. Only in exceptional circumstances will amounts on live accounts be considered where there is on-going accruing debt. Such cases must demonstrate that further recovery action will not achieve collection of the debt.

It is not possible to list every scenario which could make a debt suitable for write off. However, the following shows the main reasons why debts become irrecoverable and where approval for write off should be sought:

<b>Reason for Write off</b>	<b>Delegated authorisation approval by S151 Officer</b>	<b>Authorisation Approval by Cabinet</b>
Absconded and/or No Trace: All reasonable attempts to find debtor have failed.	£5,000 and below	£5,001 and above
Deceased: Insufficient or no funds in the Deceased's estate to pay the amount outstanding	£5,000 and below	£5,001 and above

Debt 'out of time' and/or too old to recovery: Debts over 6 years old where a liability order has not been granted (council tax and NDR), or no contact has been made and no payments have been received; in accordance with the Limitations Act 1980, as amended. However for certain Sundry Debts there may be exemptions to this rule and officers should consult Legal Services where they believe the debt is no longer enforceable by virtue of the Limitations Act 1980.	£5,000 and below	£5,001 and above
Uneconomical to pursue/pursue further: When all recovery processes have been tried or considered or the cost of proceedings would be prohibitive.	£5,000 and below	£5,001 and above
Hardship: Each case taken on its own merits	£5,000 and below	£5,001 and above
Debt remitted by Court: Magistrates have remitted the debt.	S151 Officer	n/a
Bankrupt: The debtor is declared bankrupt and sums due as at the date of bankruptcy cannot be recovered.	S151 Officer	Reported for information only
Debt Relief Order (DRO) The debt is included in the DRO and cannot be recovered.	S151 Officer	Reported for information only
Company in Liquidation/Wound Up/Dissolved/Struck Off: The debtor is a Limited Company. The Company no longer exists as a legal entity and there is no means of recovering the debt.	S151 Officer	Reported for information only

Company in Administration: The company is being administered on behalf of its creditors and the Administrators have no legal responsibility for the accrued debts of the company.	S151 Officer	Reported for information only
Company Voluntary Arrangement (CVA): The company has entered into a voluntary arrangement with creditors through an insolvency practitioner.	S151 Officer	Reported for information only
Individual Voluntary Arrangement (IVA): The debtor has entered into a voluntary arrangement with creditors through an insolvency practitioner.	S151 Officer	Reported for information only
Non-recoverable housing benefit overpayments: Housing benefit has been overpaid but is not recovered under the Housing Benefit Regulations 2006, 100(2) or the Housing Benefit (Persons who have reached the qualifying age for State Pension Credit) Regulations 2006, 81(2)	S151 Officer	n/a