



Revenues Debt Recovery Policy

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1 Aims of this Policy

1.1 To ensure that debts due to the Council are collected and recovered in a timely and professional manner.

1.2 To ensure that all debtors are treated in a consistent and fair manner, taking the circumstances of individual debtors into account where these are known and it is appropriate to do so.

1.3 To distinguish between debtors who can't pay their debts and those who won't pay and deal with them accordingly.

1.4 To encourage debtors to contact the Council as soon as possible to discuss their circumstances if they are unable to pay their debts as billed.

1.5 To ensure that debtors are given all necessary information in relation to their debt, including advice on benefits, exemptions and other reliefs to which they may be entitled.

1.6 To ensure that where third parties are employed by the Council to collect and recover amounts that they act in accordance with the Council's Policies.

1.7 To ensure where possible that where a customer owes multiple debts (including different types of debt) that these are considered together when discussing repayment options.

1.8 The general principles laid down in this policy may be varied by management according to circumstances in individual cases where it is deemed appropriate.

2 Debts covered by this Policy

2.1 This Policy covers the following debts:

- (a) Council Tax
- (b) Business Rates (also known as National Non-Domestic Rates or NNDR)
- (c) Sundry Debts
- (d) Overpaid Benefit

3 Documentation

3.1 All bills, invoices and documentation issued will comply with all relevant legislation and legal practices and be written as far as possible in plain English.

3.2 Documents will be provided in other formats on request where necessary e.g. electronically, in other languages, large print, Braille etc.

4 Staff Training

4.1 Staff will receive Customer Care training to ensure that all customers are dealt with in a courteous and professional manner. In return, staff have the right to be treated in a similar manner and have the authority to terminate conversations where they are subject to foul or abusive language or threatening behaviour.

4.2 All staff involved in the collection and recovery of debts will receive appropriate technical training to deal with customers' problems and queries and provide relevant advice including referral to external debt advice agencies.

5 General Principles of Recovery

5.1 The Council aims to make the payment of debts as convenient and straightforward as possible with Direct Debit being the Council's preferred payment method.

5.2 All action taken to recover a debt will be proportional. The particular course of action taken will depend on a number of factors including the size and nature of the debt, the effect on the debtor and the cost to the Council in taking that action.

5.3 A consistent approach will be taken to ensure that customers with similar circumstances are dealt with in similar ways. Factors such as the debtor's previous payment record will be taken into account.

5.4 At all stages of recovery, the debtor will be informed of the action being taken and what the consequences of that action may be for them.

6 Council Tax

6.1 Demand Notice

6.1.1 Council Tax demands will be sent to all liable taxpayers in accordance with legislation as soon as practicable after their liability has been determined. The demand will state the total amount due, the amounts and dates of any instalments due to be paid and provide information for the taxpayer on the various methods of payment. Direct Debit will be promoted as the Council's preferred payment method.

6.2 First Reminder

6.2.1 Where -

- (a) a reminder has not previously been issued in respect of the demand, and
- (b) an instalment is not paid by the date specified in the demand, and
- (c) there are future instalments still remaining on the demand

a reminder notice will be issued. The notice will advise the customer of the overdue amount and that if it is not paid by the date specified in the reminder, the taxpayer loses the right to pay by instalments and the whole of the remaining amount on the demand will become payable after a further 7 days. The reminder will advise the

customer that if the overdue amount is not paid no further reminder will be sent and that the remaining sum of £? will immediately become due for payment.

6.2.2 Provided the customer pays the overdue amount and continues to pay future instalments as and when they fall due, no further recovery action will be taken.

6.3 Second Reminder

6.3.1 Where -

- (a) a reminder notice has previously been issued in respect of the demand, and
- (b) a further instalment is not paid on time, and
- (c) there are future instalments still remaining on the demand

a second reminder notice will be issued. The notice will advise the customer of the overdue amount and that if it is not paid by the date specified in the reminder, the taxpayer loses the right to pay by instalments and the whole of the remaining amount on the demand will become payable after a further 7 days. Provided the customer pays the overdue amount and continues to pay future instalments as and when they fall due, no further recovery action will be taken. A taxpayer is only entitled to be sent a maximum of two reminder notices in respect of any one demand notice. The reminder will advise the customer that if the overdue amount is not paid no further reminder will be sent and that the remaining sum of £? will immediately become due for payment.

6.4 Final Reminder

6.4.1 Where -

- (a) an instalment is not paid by the date specified in the demand, and
- (b) there are no future instalments remaining to be paid on the demand

a final reminder notice will be issued. This will require the balance remaining on the demand notice to be paid within 7 days.

6.5 Final Notices

Discretionary Final Notices

6.5.1 Where -

- (a) reminders notices have previously been issued in respect of the demand, and
- (b) a further instalment is not paid on time

No further reminders are legally required. The accounts will escalate from Reminder notice to summons.

Statutory Final Notices

6.5.2 If there has been a financial amendment to amount due

a final notice will be issued. This will require the balance remaining on the demand notice to be paid within 7 days. Depending on their previous payment history, the taxpayer may have the final notice withdrawn and their instalments re-instated on condition that they pay by Direct Debit. Failure to pay will result in the accounts escalating to Summons.

6.6 Application for a Liability Order

6.6.1 Where, following the issue of a final reminder notice (see 6.4 above) or a final notice (see 6.5 above) Discretionary or Statutory, the amount outstanding remains unpaid after the date specified in the notice, the Council will make an application to the Magistrates' Court for a Liability Order.

6.6.2 A summons will be served on the taxpayer informing them that the Council has made a complaint to the Magistrates' for non-payment of Council Tax. The summons will state the date, time and location of the hearing, the amount of unpaid Council Tax and the amount of costs the Council will be applying for at the hearing. At least 14 days notice will be given of the hearing date. The summons will include information and advice to enable the taxpayer to decide whether they need to attend the hearing.

6.6.3 If the taxpayer pays the total amount shown on the summons in full (including the costs) prior to the hearing, the case will be withdrawn and no further action will be taken.

6.6.4 If the taxpayer does not pay the total amount shown on the summons in full (including the costs) prior to the hearing, the case will proceed and the Magistrates will be asked to issue a Liability Order and award the costs stated on the summons.

6.6.5 Once a Liability Order is obtained, the Council can then select the most appropriate recovery method from the following options to ensure payment of the debt in the shortest time:

- (a) Use of Enforcement Agents.(EA)
- (b) Attachment of Earnings Order
- (c) Attachment of Benefits Order
- (d) Attachment of Allowances Order
- (e) Charging Order
- (f) Insolvency Proceedings
- (g) Committal to Prison

6.6.6 The Council may alternate between recovery methods available, but only one method, per liability order, may be used at any one time.

6.7 Statutory Information Request

6.7.1 Following the issue of a Liability Order a letter will be sent to the taxpayer advising them that a Liability Order has been granted against them and outline the further recovery options that are available to the Council to recover the debt. The letter will also inform the taxpayer that if the amount is not paid in full within 14 days they are legally required to inform the Council of their employment details.

6.7.2 The letter will encourage the taxpayer to contact the Council to discuss their circumstances and make an offer or payment and warn them that Enforcement Agents may be instructed to collect the amount outstanding which could result in them being liable for additional substantial fees.

6.8 Payment Arrangements

6.8.1 At any time leading up to and following the issue of a summons for non-payment, a formal payment arrangement may be agreed with a debtor on the understanding that if a Summons has been issued or the Taxpayer has previous bad payment history, the Council will continue to apply for a liability order. This ensures that the Council has the means to enforce recovery of the debt if the debtor defaults on an arrangement.

6.8.2 Where the debtor has an ongoing liability to Council Tax, any payment arrangement will normally be structured to be completed by the end of the current financial year to ensure arrears are cleared before the next year's Council Tax becomes due.

6.8.3 If the debtor has a previous good payment history officers will have the discretion to waive the costs of obtaining the liability order provided the debtor maintains payments in accordance with the arrangement. Costs will not be cancelled until the Council Tax debt had been cleared.

6.8.4 Payment arrangements will be monitored and at least one reminder letter will be sent before an arrangement is cancelled and recovery is continued.

6.9 Attachment of Earnings Order

6.9.1 Where a debtor has provided employment details, an order may be sent to the debtor's employer requiring them to make deductions from the debtor's wages which must then be paid directly to the Council. The amount and frequency of deductions to be made will be in accordance with a set scale laid down in regulations. An explanatory leaflet will be included with the order explaining how to calculate the amount to be deducted from the debtor's wages.

6.9.2 A copy of the order and explanatory notes will be sent to the debtor along with an instruction that they must inform the Council if they leave their employment. The debtor must inform the Council within 14 days if their employment status changes.

6.9.3 In accordance with regulations, up to two orders may be in force concurrently.

6.9.4 The debtor's employer may make an additional deduction to cover their administration costs. The maximum amount is prescribed in regulations.

6.10 Attachment of Benefits

6.10.1 Where a debtor is in receipt of a relevant state benefit, an application may be made to the Department for Work and Pensions (DWP) requiring them to make deductions from the debtor's benefit which will then be paid directly to the Council. The amount and frequency of deductions to be made will be in accordance with a set scale laid down in regulations.

6.10.1 The DWP will confirm in writing to both the Council and the debtor any decision made to make deductions from the debtor's state benefit.

6.11 Attachment of Allowances Order

6.11.1 Where a debtor is an elected member of a billing authority or a major precepting authority, an order may be sent to that authority requiring them to make deductions from the debtor's allowances which must then be paid directly to the Council. The amount and frequency of deductions to be made will be in accordance with regulations.

6.12 Use of Enforcement Agents (EA)

6.12.1 If the debtor against whom a Liability Order has been made fails to complete and return the Statutory Information Request, or fails to make or maintain a satisfactory payment arrangement, Enforcement Agents may be instructed to act on behalf of the Council to collect the debt.

6.12.2 Any EA used by the Council will be certificated and be members of a recognised professional body. They will adhere to the service level agreement negotiated with the Council and act in accordance with national standards for EA as laid down by the Lord Chancellor's Department.

6.12.3 Once a Liability Order has been passed to and remains with the EA, all correspondence regarding payment will be dealt with by the EA and no arrangement for payment can be made directly with the Council, unless the Collections Manager or Team Leader agrees that there are circumstances which dictate otherwise.

6.12.4 If it is apparent to the EA that they are attempting to recover a debt from a person who may be classed as 'vulnerable' they will suspend all action and contact the Council for further instructions. 'Vulnerable' individuals may include persons who –

- (a) are elderly (aged 70 or over)
- (b) appear to be severely physically or mentally impaired or have special needs
- (c) have young children where there is also evidence of severe social deprivation
- (d) are heavily pregnant
- (e) are in mourning due to recent bereavement
- (f) have difficulty communicating due to pronounced hearing or visual impairment or have language difficulties
- (g) are unemployed and in receipt of a state benefit

6.12.5 Bailiffs will seek to collect the full debt. They may enter into a "controlled goods order" with the debtor subject to a satisfactory payment arrangement. This will identify goods owned by the debtor that will be left in the debtor's possession but which must not be removed or sold as they may be lawfully removed at a later time by the EA to be sold in satisfaction of the debt.

6.12.6 EA will be entitled to levy all appropriate fees as set down in regulations.

6.12.7 In the event that the debtor does not have sufficient goods (where the sale of such goods would not clear the debt) or the EA is unable to gain peaceable entry to the debtor's property, the EA will return the Liability Order to the Council endorsed 'Nulla Bona'. This will enable the Council to commence committal proceedings against the debtor where appropriate, subject to the authorisation of the Head of Resources.

6.12.8 Where a EA has returned a Liability Order having been unable to collect the debt (by reason other than there being insufficient goods), the Liability Order may be recycled to another EA firm to attempt recovery.

6.13 Charging Order

6.13.1 Where recovery through an Attachment of Earnings, Benefit or Allowance is not appropriate and use of EA has been unsuccessful (or thought inappropriate or unlikely to be successful) and the debt totals more than £1000 and the debtor owns the property that the outstanding Council Tax debt relates to, a charging order may be applied for through the County Court.

6.13.2 The Council may engage external solicitors to apply for the charging order.

6.13.3 Where a charging order is made, the outstanding debt will be repaid from the proceeds of sale if the property is sold. The order will also allow the Council to commence proceedings to force the sale of the property, if appropriate.

6.14 Insolvency

6.14.1 Where recovery through an Attachment of Earnings, Benefit or Allowance is not appropriate and use of EA has been unsuccessful (or thought inappropriate or unlikely to be successful) and the debt totals more than £5,000 proceedings may be instigated to have the debtor made bankrupt (in the case of an individual) or wound-up (in the case of a company).

6.14.2 The Council may engage external solicitors to apply for the bankruptcy/winding-up.

6.14.3 Prior to the bankruptcy proceedings commencing a "letter before action" will be sent to the debtor detailing the implications and possible costs of bankruptcy and options available to prevent it (as the winding up procedures are similar in process to the bankruptcy they will not be detailed in this policy but if a decision is made to start winding-up proceedings (see 6.16 below) a similar "letter before action" will be sent detailing the costs and implications of winding-up).

6.14.4 If the debtor has not paid the debt, or made an acceptable arrangement to pay it, within 14 days of the "letter before action" being sent a statutory demand will be served on the debtor (the formal commencement of bankruptcy proceedings). This demand will detail the amount outstanding and give the debtor 18 days to ask the court to stop the bankruptcy process or 21 days to pay the debt. At this stage the Council can still accept a payment arrangement that would stop the bankruptcy proceedings.

6.14.5 If the court does not stop the process, or the debtor has not made payment or a suitable arrangement a bankruptcy petition will be issued. If the debtor does not pay the debt at this stage (plus the costs incurred by the Council) the case will go to court on the date specified in the petition and it will be up to the court to decide if the person should be made bankrupt.

6.15 Committal to Prison

6.15.1 Where recovery through an Attachment of Earnings, Benefit or Allowance is not appropriate and use of EA has been unsuccessful the Council can ask the Magistrates' Court to send a summons to the debtor to attend a committal hearing.

6.15.2 If payment in full is made at this stage (including the costs of making the application) the hearing will not proceed. However, if payment in full is not made the hearing must go ahead i.e. the Council will not accept an agreement at this stage- it will now be for the court to decide what must be paid. Unless there are extenuating circumstances and a decision will be made by the Revenues Manager or the Collections Manager.

6.15.3 At the hearing the Magistrates will try to establish why payment has not been made (a person can only be sent to prison for non-payment of Council Tax for either wilful refusal or culpable neglect). They will also make enquiries about a person's income and expenditure (so they can make a decision on what they think the debtor can afford to pay).

6.15.4 There are a number of decisions the Magistrates can make:

- (a) An order to pay with a suspended sentence (the debtor will be told to make payments of a set amount with the debtor being sent to prison for a certain period if the payments are not made).
- (b) An order to pay without a suspended sentence (the debtor will be told to make payments of a set amount and if those are not made the case will be referred back to the court to decide on any further action).
- (c) Write-off some or all of the debt
- (d) Adjourn the case (if they feel more evidence is needed before a decision can be made)
- (e) Committal to prison- the Magistrates can send a debtor immediately to prison for up to 3 months.

6.16 Making a decision on the recovery action to be pursued

6.16.1 It is not possible to set out a decision making process for which recovery method to use that would cover every eventuality, and so a certain level of discretion must be allowed in this process. However, where the procedure detailed below is not followed it must be approved by the Revenues Manager or the Collections Manager with an accompanying note detailing why approval has been given to deviate from the procedure.

6.16.2 In deciding what recovery action to take the effect this action will have on the debtor must be balanced against the need to collect amounts due to the Council and the need to be fair to people who have paid their legally due tax to the Council on time. The costs that will be incurred by the Council and likelihood of recovering the debt will also be taken into account.

6.16.3 The recovery actions available to the Council can be split into 3 stages depending on the effect (financial and otherwise) on the debtor (with stage 1 being the least effect and stage 3 the most). Because of this it would be the case in most circumstances that a stage 1 recovery method is used before a stage 2 and a stage 2 before a stage 3 (but there will be occasions where this is not necessarily the case).

6.16.4 The stages are:

Stage 1: Attachment of earnings/benefits/allowances

Stage 2: Use of Enforcement Agents

Stage 3: Charging Order, Bankruptcy, Committal to Prison

At all stages (except where a bankruptcy petition has been issued or a committal summons served) consideration will be given to a suitable agreement to pay the debt without further action being taken.

6.16.5 Use of stage 1 methods:

Wherever possible a stage 1 method should be used to collect a debt where an arrangement has not been made (an arrangement may not have been made because the debtor has not contacted the Council, or has offered an arrangement that is not acceptable to the Council, or has a history of not keeping to arrangements), or an arrangement has not been kept to, or a stage 1 method of recovery has been used successfully before.

6.16.6 Use of stage 2 method:

If it is not possible to use a stage 1 method (because no details of the debtor's employment or benefits are known, or a previous attempt to collect using one of these methods has failed) the stage 2 method will be considered.

6.16.7 Use of a stage 3 method

A stage 3 method will only be used where all stage 1 and 2 methods have been tried or considered. The authorisation to commence a stage 3 method must be made by the Head of Resources. Before a stage 3 method is commenced a Recovery Decision form must be completed by the Head of Resources. The Revenues / Collections Manager will prepare a report for the Head of Resources to set out the key facts of the case and the reason for recommending this course of action.

In making a decision the Head of Resources must be mindful of 6.16.2. In general it should be considered that the effect on the debtor will be in the following order (least first): charging order, bankruptcy, committal (as possible loss of liberty will be considered more detrimental than the effects of a charging order or bankruptcy). In general it should be considered that the most effective way of collecting a debt will be in the following order (least first): charging order, bankruptcy or committal (as a charging order only secures the debt and requires further court action for the Council to force sale of the property).

Although committal can be an effective method of securing payment it also potentially has the most effect on the debtor (who can be sent to prison) and so would only be considered if bankruptcy or a charging order are not appropriate.

6.16.8 Consideration for a charging order/bankruptcy

As a charging order is not as effective in producing payment it will only be considered where it appears there is a doubt that bankruptcy is appropriate due to the circumstances of the debtor or that there is a realistic prospect of the property being sold in the near future.

Before commencing bankruptcy proceedings a senior officer will contact the debtor by telephone or email to attempt to encourage them to enter into negotiations for payment of the debt. If that is not possible a letter will be sent to ask the debtor to contact a named officer to avoid further consideration of the use of bankruptcy proceedings.

The appropriate officer will establish (via a credit search) that it appears that there is sufficient assets/equity to enable the debt to be paid in the event of bankruptcy.

The Revenues/Collections Manager will review the case to ensure that all other methods of recovery have been considered.

The appropriate officer will review the case to ensure there are no outstanding issues with regards to liability or no outstanding benefit applications.

The appropriate officer will collate any available information regarding the debtor's circumstances that may affect the appropriateness of bankruptcy action, particularly to see if there may be a disability (including mental impairment) that may affect their ability to engage with the Council or understand what is happening. This will be done by:

- (a) checking for any evidence that the about the debtor that may be relevant.
- (b) checking all benefit documents/forms for any evidence of a benefit being paid that is linked to a disability
- (c) checking details of all previous contacts with the Council Tax section for any evidence of disability/vulnerability.

If, as a result of the above, it is decided that charging order or bankruptcy proceedings may be the best method of recovery the case will be passed to the Council's solicitors asking them if they consider charging order/bankruptcy proceedings to be appropriate. If so, they will issue a "letter before action" letter to the debtor before the proceedings commence.

6.16.9 Consideration for committal action.

If a charging order/bankruptcy are not appropriate the Revenues/Collections Manager will follow the same procedure as in 6.16.8 (apart from the credit search) above to decide if committal action should be commenced. The authorisation to proceed with committal action must be made by the Head of Resources.

7 Business Rates

7.1 Demand Notice

7.1.1 Business Rates demands will be sent to all liable taxpayers in accordance with legislation as soon as practicable after their liability has been determined. The demand will state the total amount due, the amounts and dates of any instalments due to be paid and provide information for the taxpayer on the various methods of payment. Direct Debit will be promoted as the Council's preferred payment method.

7.2 Reminder

7.2.1 Where an instalment, or a final balance, has not been paid a reminder will be issued for the instalment(s) or final balance outstanding. The amount shown as outstanding in this reminder is payable within 7 days.

7.2.2 If a reminder is issued for an outstanding instalment and the amount on that instalment is paid, no further reminders will be sent for any future instalments that are not paid on time. If a future instalment is not paid on time the balance of the year's charge becomes payable on that future failure to pay on time.

7.3 Final Notice

7.3.1 Where either:

- (a) a previous reminder for an outstanding instalment has been paid but a future instalment has not been paid on time (and so the whole year's balance has become payable); or
- (b) a reminder for an outstanding instalment has not been paid; or
- (c) a reminder for a final balance has not been paid

a final notice will be issued for the balance outstanding requesting payment within 7 days. If the final notice has been issued because of the "cancellation" of a year's instalments, and depending on the ratepayer's previous payment history, the ratepayer may have the final notice cancelled and their instalments re-instated on the condition that they pay by Direct Debit.

7.4 Application for a Liability Order

7.4.1 Where, following the issue of a final notice (see 7.3 above), the amount outstanding remains unpaid after the date specified in the notice, the Council will make an application to the Magistrates' Court for a Liability Order.

7.4.2 A summons will be served on the ratepayer informing them that the Council has made a complaint to the Magistrates' for non-payment of Business Rates. The summons will state the date, time and location of the hearing, the amount of unpaid Business Rates and the amount of costs the Council will be applying for at the hearing. At least 14 days notice will be given of the hearing date. The summons will include information and advice to enable the ratepayer to decide whether they need to attend the hearing.

7.4.3 If the ratepayer pays the total amount shown on the summons in full (including the costs) prior to the hearing, the case will be withdrawn and no further action will be taken.

7.4.4 If the ratepayer does not pay the total amount shown on the summons in full (including the costs) prior to the hearing, the case will proceed and the Magistrates will be asked to issue a Liability Order and award the costs stated on the summons.

7.4.5 Once a Liability Order is obtained, the Council can then select the most appropriate recovery method from the following options to ensure payment of the debt in the shortest time:

- (a) Use of Enforcement Agents (EA)
- (b) Committal to prison (where there is a personal liability to pay rather than a corporate liability)
- (c) Insolvency proceedings.

7.5 Payment Arrangements

7.5.1 At any time following the issue of a summons for non-payment, a formal payment arrangement may be agreed with a debtor on the understanding that the Council will continue to apply for a liability order. This ensures that the Council has the means to enforce recovery of the debt if the debtor defaults on an arrangement.

7.5.2 Where the debtor has an ongoing liability to Business Rates, any payment arrangement will normally be structured to be completed by the end of the current financial year to ensure arrears are cleared before the next year's Business Rates becomes due.

7.5.3 If the debtor has a previous good payment history officers will have the discretion to waive the costs of obtaining the liability order provided the debtor maintains payments in accordance with the arrangement. Costs will not be cancelled until the Business Rates debt had been cleared.

7.5.4 Payment arrangements will be monitored and at least one reminder letter will be sent before an arrangement is cancelled and recovery is continued.

7.6 Use of Enforcement Agents (EA)

7.6.1 If the debtor against whom a Liability Order has been made fails to make or maintain a satisfactory payment arrangement, EA may be instructed to act on behalf of the Council to collect the debt.

7.6.2 Any EA's used by the Council will be certificated and be members of a recognised professional body. They will adhere to the service level agreement negotiated with the Council and act in accordance with national standards for EA as laid down by the Lord Chancellor's Department.

7.6.3 Once a Liability Order has been passed to and remains with the EA, all correspondence regarding payment will be dealt with by the EA and no arrangement for payment can be made directly with the Council. Unless the

Collections Manager or Team Leader agrees that there are circumstances which dictate otherwise.

7.6.4 If it is apparent to the EA that they are attempting to recover a debt from a person who may be classed as 'vulnerable' they will suspend all action and contact the Council for further instructions. 'Vulnerable' individuals may include persons who –

- (a) are elderly (aged 70 or over)
- (b) appear to be severely physically or mentally impaired or have special needs
- (c) have young children where there is also evidence of severe social deprivation
- (d) are heavily pregnant
- (e) are in mourning due to recent bereavement
- (f) have difficulty communicating due to pronounced hearing or visual impairment or have language difficulties
- (g) are unemployed and in receipt of a state benefit

7.6.5 The EA will seek to collect the full debt. They may enter into a "controlled goods order" with the debtor subject to a satisfactory payment arrangement. This will identify goods owned by the debtor that will be left in the debtor's possession but which must not be removed or sold as they may be lawfully removed at a later time by the EA to be sold in satisfaction of the debt.

7.6.6 The EA will be entitled to levy all appropriate fees as set down in regulations.

7.6.7 In the event that the debtor does not have sufficient goods (where the sale of such goods would not clear the debt) or the EA is unable to gain peaceable entry to the debtor's property, the EA will return the Liability Order to the Council endorsed 'Nulla Bona'. This will enable the Council to commence committal proceedings against the debtor where appropriate, subject to the authorisation of the Head of Resources..

7.6.8 Where a EA has returned a Liability Order having been unable to collect the debt (by reason other than there being insufficient goods), the Liability Order may be recycled to another EA firm to attempt recovery.

7.7 Insolvency

7.7.1 Where recovery through the use of an EA has been unsuccessful (or thought inappropriate or unlikely to be successful), or insolvency proceedings have been used successfully before, and the debt totals more than £5,000 proceedings may be instigated to have the debtor made bankrupt (in the case of an individual) or wound-up (in the case of a company).

7.7.2 The Council may engage external solicitors to apply for the bankruptcy/winding-up.

7.7.3 Prior to the bankruptcy proceedings commencing a "letter before action" will be sent to the debtor detailing the implications and possible costs of bankruptcy and options available to prevent it (as the winding up procedures are similar in process to the bankruptcy they will not be detailed in this policy but if a decision is made to

start winding-up proceedings (see 7.9 below) a similar “letter before action” will be sent detailing the costs and implications of winding-up).

7.7.4 If the debtor has not paid the debt, or made an acceptable arrangement to pay it, within 14 days of the “letter before action” being sent a statutory demand will be served on the debtor (the formal commencement of bankruptcy proceedings). This demand will detail the amount outstanding and give the debtor 18 days to ask the court to stop the bankruptcy process or 21 days to pay the debt. At this stage the Council can still accept a payment arrangement that would stop the bankruptcy proceedings.

7.7.5 If the court does not stop the process, or the debtor has not made payment or a suitable arrangement a bankruptcy petition will be issued. If the debtor does not pay the debt at this stage (plus the costs incurred by the Council) the case will go to court on the date specified in the petition and it will be up to the court to decide if the person should be made bankrupt.

7.8 Committal to prison

7.8.1 Where recovery through the use of EA has been unsuccessful the Council can ask the Magistrates’ Court to send a summons to the debtor to attend a committal hearing (this method of recovery is only applicable where the debtor is an individual). The authorisation to proceed with committal action must be made by the Head of Resources.

7.8.2 If payment in full is made at this stage (including the costs of making the application) the hearing will not proceed. However, if payment in full is not made the hearing must go ahead i.e. the Council will not accept an agreement at this stage- it will now be for the court to decide what must be paid.

7.8.3 At the hearing the Magistrates will try to establish why payment has not been made (a person can only be sent to prison for non-payment of Business Rates for either wilful refusal or culpable neglect). They will also make enquiries about a person’s income and expenditure (so they can make a decision on what they think the debtor can afford to pay).

7.8.4 There are a number of decisions the Magistrates can make:

- (a) An order to pay with a suspended sentence (the debtor will be told to make payments of a set amount with the debtor being sent to prison for a certain period if the payments are not made.
- (b) An order to pay without a suspended sentence (the debtor will be told to make payments of a set amount and if those are not made the case will be referred back to the court to decide on any further action.
- (c) Write-off some or all of the debt
- (d) Adjourn the case (if they feel more evidence is needed before a decision can be made)
- (e) Committal to prison- the Magistrates can send a debtor immediately to prison for up to 3 months.

7.9 Making a decision on the recovery action to be pursued

7.9.1 It is not possible to set out a decision making process for which recovery method to use that would cover every eventuality and so a certain level of discretion must be allowed in the process. However, where the procedure detailed below is not followed it must be approved by the Revenues/Collections Manager with an accompanying note detailing why approval has been given to deviate from the procedure.

7.9.2 In deciding what recovery action to take the effect this action will have on the debtor must be balanced against the need to collect amounts due to the Council and the need to be fair to the people who have paid their legally due tax to the Council on time. The costs that will be incurred by the Council and likelihood of recovering the debt will also be taken into account.

7.9.3 Taking into account 7.9.2 above the preferred order of using recovery methods is as follows:

- (a) Enforcement Agents action
- (b) insolvency
- (c) committal to prison

7.9.4 Where a suitable arrangement has not been made (an arrangement may not have been made because the debtor has not contacted the Council, or has offered an arrangement that is not acceptable to the Council, or has a history of not keeping to arrangements), or an arrangement made and defaulted on, use of the EA to collect the debt will be considered.

7.9.5 Where use of the EA has been unsuccessful (or it is either not considered appropriate or unlikely to be successful in a particular case), and a suitable arrangement has not been made, use of insolvency proceedings will be considered.

The authorisation to commence Insolvency proceedings must come from the Recovery/Collections Manager and a Recovery Decision Form must be completed by one of the above officers before such action is commenced.

Before commencing insolvency proceedings an appropriate officer will consider visiting the debtor either at the business premises or at the home address (in the case of an individual).

The appropriate officer will establish (via a credit search) that it appears there is sufficient assets/equity to enable the debt to be paid in the event of insolvency.

The appropriate officer will review the case to ensure that all other methods of recovery have been considered.

The appropriate officer will review the case to ensure there are no outstanding issues with regard to liability.

In the case of an individual the appropriate officer will collate any available information regarding the debtor's circumstances that may affect the appropriateness of insolvency action, particularly to see if there may be a disability

(including mental impairment) that may affect their ability to engage with the council or understand what is happening.

This will be done by:

- (a) checking for any evidence that the about the debtor that may be relevant.
- (b) checking any benefit forms/documents for any evidence of a benefit being paid that is linked to a disability
- (c) checking details of all previous contacts with the Council Tax/Business Rates section for any evidence of disability/vulnerability.

It would not be unreasonable for the appropriate officer to conclude that if the debtor is continuing to run the business this may indicate that there are no problems with regard to the above and he/she may decide that the above checks are not necessary.

If, as a result of the above, it is decided that insolvency proceedings may be the best method of recovery the case will be passed to the Council's solicitors asking them to consider insolvency proceedings to be appropriate. If so, they will issue a "letter before action" letter to the debtor before the proceedings commence.

7.9.6 If insolvency proceedings are not appropriate, and the debtor is an individual, the appropriate officer will follow the procedure as in 7.9.5 above (except the credit search) to decide if committal action should be commenced. The authorisation to proceed with committal action must be made by the Head of Resources.

7.10 County Court Action

7.10.1 The Council can pursue outstanding Business Rates through the County Court, but only where a liability order has not already been granted.

7.10.2 This option would only be considered in exceptional circumstances and would be at the discretion of the Revenues/Collection Manager. It is likely that this would only be considered where there have been previous problems in recovering amounts from a debtor using the methods above.

8 Sundry Debts

8.1 General

8.1.1 This section covers all sundry debts invoiced by the Miscellaneous Income Section.

8.1.2 Wherever appropriate, service providers will obtain payment in advance for any service. In all other cases, the service department will promptly complete an invoice requisition for the Miscellaneous Income Section to enable an invoice to be issued.

8.2 Invoice

8.2.1 The due date for payment will be determined by the service department. In the absence of any direction by the service department all invoices will request payment within 14 days.

8.3 Reminder

8.3.1 At the expiry of a period of at least 14 days from the issue of the invoice if payment (or a suitable arrangement to pay the invoice) has not been made a reminder notice will be issued.

8.3.2 Consideration may be given at this point to informing the service department of the non-payment so that they may consider removing any ongoing or future service.

8.3.3 The reminder will request payment within a further 14 days.

8.4 Final notice/Notice of intended further action

8.4.1 At the expiry of a period of at least 14 days from the issue of the reminder if payment (or a suitable arrangement to pay the balance) has not been made a final notice will be issued informing the debtor that the Council may take further action (including recovery by a debt collection agency or through the County Court) without further notice if payment is not made.

8.4.2 Consideration may be given at this point to informing the service department of the non-payment so that they may consider removing any ongoing or future service (if not already done so under 8.3.2).

8.5 Further action

8.5.1 At the expiry of a period of at least 14 days from the issue of the final notice if payment (or a suitable arrangement to pay the balance) is not made a decision will be made on what further action should be taken.

8.5.2 The following options are available at this point:

- (a) a visit to the debtor at his home or business address
- (b) referral of the case to an external debt collection agency
- (c) county court action
- (d) refer debt for write-off

8.5.3 The decision on what course of action to take will be made by the Miscellaneous Income Officer or the Collections/Revenues Manager.

8.5.4 Any costs involved in pursuing court action or referral to an external debt collection agency (that is not recovered from the debtor) will be recharged to service departments. Because of this, approval to pursue one of these methods will be sought from the service department before such action is commenced.

9 Benefit Overpayments

9.1 General

9.1.1 This section covers all Housing Benefit (HB), Local Housing Allowance (LHA), Council Tax Benefit (CTB) or Council Tax Support (CTS) overpayments that have been classed as recoverable overpayments by the Benefits Section.

9.1.2 In calculating any overpayment, any underlying entitlement will be calculated to reduce the debt. Underlying entitlement is the amount of benefit that would have been payable if all the facts had been known when the benefit was originally determined. If this is greater than the actual amount of benefit paid, then the overpayment will be reduced by the difference.

9.1.3 Where a claimant has an overpayment of CTB or CTS, the overpayment will be added to the relevant Council Tax account and recovered as a Council Tax debt.

9.1.4 Where a claimant has an overpayment of HB or LHA, if the claimant is currently in either HB or LHA an amount will be deducted from the ongoing benefit payments. The amount deducted will be in accordance with standard rate deductions as determined by the Department for Work and Pensions.

9.1.5 For all other HB or LHA overpayments, an invoice will be sent for the amount overpaid. This will normally be sent to the claimant except where the original payment of benefit was made to a landlord and the overpayment has resulted from a failure on the landlord's part to notify the Council of a change in circumstances, in which case the invoice will be sent to the landlord.

9.1.6 Where a landlord is liable to repay an overpayment in respect of a claimant but the claimant is no longer in receipt of HB/LHA, if the landlord is receiving benefit payments for other tenants, the overpayment may be deducted from those other payments.

9.2 Invoice

9.2.1 An invoice will be issued by the Benefits Section requesting payment within 14 days.

9.3 Reminder

9.3.1 At the expiry of a period of at least 14 days from the issue of the invoice if payment (or a suitable arrangement to pay the invoice) has not been made a reminder notice will be issued.

9.3.2 The reminder will request payment within a further 14 days.

9.4 Final notice/Notice of intended further action

9.4.1 At the expiry of a period of at least 14 days from the issue of the reminder if payment (or a suitable arrangement to pay the balance) has not been made a final notice will be issued informing the debtor that the Council may take further action

(including recovery by a debt collection agency or through the County Court) without further notice if payment is not made.

9.5 Further action

9.5.1 At the expiry of a period of at least 14 days from the issue of the final notice if payment (or a suitable arrangement to pay the balance) is not made a decision will be made on what further action should be taken.

9.5.2 The following options are available at this point:

- Referral for deductions from Department for Work and Pensions Benefits
- Application for Direct Earnings Attachments
- County court action
- Referral of the case to an external debt collection agency
- Debt for write-off

9.5.3 The decision on what course of action to take will be made by the Benefits Technical Officer or the Benefits Manager.

9.5.4 Any cases where county court action is deemed appropriate will be passed to the Miscellaneous Income Section to pursue.

10 Write-Offs

10.1 Any debt which is considered to be irrecoverable will be submitted for write-off in accordance with the Council's Financial Regulations.

10.2 Where the circumstances that led to a debt being written off change, for example where a debtor who previously could not be traced is subsequently located, the debt may then be resurrected and recovery action re-commenced.

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