

APPENDIX G

COUNCIL TAX, NON DOMESTIC RATES (BUSINESS RATES) AND BENEFITS OVERPAYMENTS RECOVERY POLICY

INDEX

- 1.0 Policy Aims
- 2.0 The Revenues Service Customer Commitment
- 3.0 Payment Arrangements
- 4.0 The Council's Recovery Principles for Council Tax, Business Rates and Housing Benefit Overpayments.
- 5.0 The Council's Recovery Process for Council Tax and Business Rates
- 6.0 The Council's Recovery Process for Housing Benefit Overpayments
- 7.0 Absconders
- 8.0 Write Offs

Appendix 1 – Vulnerability Criteria

Appendix 2 – National Standards for Enforcement Agents 2012 and Bailiff Code of Practice

Appendix 3 - Council Tax and Business Rates Recovery Flow Charts

1.0 Policy Aims

The aims of this policy are to:

- Help minimise debts to the Authority and improve the Council's income levels through the efficient and effective collection of Council Tax, Business Rates and Benefit Overpayments;
- Effectively pursue all amounts due to the Council so that all customers who have the ability to pay do so;
- Ensure that the customer's circumstances (where known) are taken into account when deciding the most appropriate form of recovery action to take;
- To ensure that a balance is achieved for the customer and other customers by handling debt cases sensitively yet still taking pro-active, robust action in order to maximise income to the council and reduce the impact on other customers.
- Treat individuals consistently and fairly regardless of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and;
- Protect individual rights under Data Protection and Human Rights legislation.

Handling debt cases sensitively

A prime intention of the Council is to operate sensitive debt recovery procedures which do not place the individual in hardship and where possible do not affect a business' financial viability. This will be achieved by having realistic, flexible methods of payment that can be adapted to the circumstances of the customer.

Prevention is the first essential step in the effective recovery of debt. There are a number of measures that can be taken to minimise indebtedness at an early stage which reduces the necessity for costly enforcement action. This not only reduces cost but also works towards avoiding potential hardship for customers.

To achieve this, the Council promotes early contact with customers, establishes the correct amount that is payable and makes mutually acceptable arrangements to pay.

At all stages of billing, collection and recovery of Council Tax, Business Rates and Benefit Overpayments, the Council will give customers the opportunity to make individual arrangements to pay. Where a customer defaults on the arrangement on more than two occasions, this facility will be withdrawn and only re-instated if payment is made to bring the arrangement up to date or the customer contacts the Council to renegotiate payments. If no contact is received, alternative enforcement options will be considered.

The Council will promote the take-up of all available reductions for Council Tax and Business Rates to reduce our customers' liability where circumstances allow. Where an application for relief, a reduction or Council Tax Support is pending, recovery action will be suspended to allow time for the application to be processed.

The Council when discharging the functions to which this policy relates will comply with the relevant legislation and have regard to relevant government guidance and policy.

The Council recognises that the voluntary sector advice agencies, debt support organisations and Credit Unions that operate in the Council area have a key role to play in both the prevention of debt

and the debt recovery process. As such the Council will continue to support and work in partnership with such organisations.

At all stages of the recovery and enforcement process, the Council will aim to minimise any additional costs to customers by communicating proactively with those in arrears and publicising the next steps should contact not be made. This would lead to further recovery action being undertaken and additional costs being incurred at the latter stages of the enforcement process.

Realigning Payment Methods and Procedures

This policy document works in conjunction with the Partnership's aligned policy on Payment Methods/Arrangements, which is subject to separate approval by Members.

2.0 The Revenues Service Customer Commitment

The Revenues Service will:

- Provide an accurate, clear and prompt billing service, ensuring that reminders and notices are issued in a timely manner, meeting all legal requirements.
- Respond quickly to customers' changes in circumstances and take those changes into consideration when we determine the most appropriate action to be taken.
- Provide an accurate and prompt assessment of Council Tax Support and Housing Benefit claims including assisting customers in completing the relevant forms.
- Encourage customers, or their pre-authorised representatives, to make contact as soon as possible where they will have difficulty in making or maintaining their payments.
- Advise customers or refer them to the relevant organisations/agencies if there is a likelihood of other benefit entitlement or they require money advice.
- Aim to deal with cases of multiple debts on a corporate basis.
- Have regular liaison meetings with relevant agencies.
- Respond positively to all recommendations made by those agencies.
- Conduct all recovery action in accordance with the procedures attached to this policy. (See sections 4.0 and 5.0).
- Make every reasonable effort to contact customers at an early stage in the recovery process.
- Work with people in debt, or at significant risk of getting into debt, to set payment arrangements they can afford and to stay in touch with customers until their debts are cleared.
- Ensure all payment arrangements are mutually agreed between the Council and the customer.
- Keep customers informed of the action being taken and other types of action that may be taken.
- Communicate in 'Plain English' without using jargon or unnecessary technical or legal content.
- Provide support for vulnerable customers through home visits as required.
- As required, make appropriate translation services available to customers.
- Support businesses who are suffering financial difficulty by giving advice regarding reliefs, including mandatory and discretionary relief and small business rate relief.

- Deal with complaints in line with the Council's Corporate Complaints Policy.

3.0 Payment Arrangements

The Council will do everything it can to help residents to make the most of their incomes and reduce their debts before they become a problem. By agreeing reasonable arrangements, the Council will seek to avoid, where possible, additional court costs, collection agent fees and administration fees being added to the debt. All payment arrangements will be sustainable for the customer, taking into account their income, expenditure and savings. Documentary evidence will only be requested where absolutely necessary.

When making arrangements to pay, the Council will seek to clear debts within the financial year of the liability. Where this is not possible, the Council will seek to reach an agreement that allows, as a minimum, the payment of the continuing liability plus an affordable amount off any arrears. Arrangements will be assessed based upon the affordability and sustainability for payment and seek to ensure that the debt is paid off within a reasonable period.

Any customer who wishes to amend the level of payment under an arrangement may have their case reviewed by a member of the Enforcement Team.

Where customers are likely to be entitled to welfare benefits they will be signposted to the most appropriate agency.

When agreeing an arrangement to pay with a customer, where appropriate, Enforcement Officers will refer to the Guidance on Vulnerability (Attached Appendix 1 – Vulnerability Criteria). The guidance will be updated upon completion of the Government's consultation on enforcement reform.

Payment dates outside of normal schedules will be negotiated to assist the customer.

Should a customer default on a payment arrangement, the Council will expect the customer to bring the arrangement up to date, unless there has been a significant change in their circumstances. In this case the payment arrangement will be re-negotiated. If payment is not received or, a renegotiation of the arrangement is not agreed, alternative enforcement options will be considered.

All payment arrangements will be agreed with the customer or their nominated representative.

Customers will be advised of other organisations that can provide debt advice.

Whether the arrangement is made by telephone or by personal contact, the Council will confirm the arrangement in writing, clearly detailing the arrangement and the consequences of not meeting the payments.

4.0 The Council's Recovery Principles for Council Tax and Business Rates and Benefit Overpayments

The Council will follow the principles and processes (as laid down in statute) outlined below for Council Tax, Business Rates and Housing Benefit Overpayments. All recovery actions are undertaken in accordance with the relevant Act and regulations.

Every demand for money will be correctly addressed to the person who is liable to pay it. The name on the demand will be that of a person or body possessing "legal personality"

Demands will, wherever possible, be issued on the day of production.

All notices issued by the Council will comply with the corporate style guidance and be readily identifiable as being from the Council. All bills and notices will be clear, accurate and timely indicating what must be paid and when.

The Council will ensure that all follow up recovery documentation is clear and informative so that customers are fully aware of the procedures and consequences and options available.

In the interest of economy and where appropriate all demands, reminders and final notices shall be issued by 2nd class post unless contrary to regulations or other statutory or legal requirements.

All relevant information relating to a demand will be kept either in paper or scanned image format until at least six years after the demand is raised. If at the end of that six-year period the demand still remains unpaid, the supporting documentation will be retained until either the bill is paid or the debt is written off.

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.

Debts should be collected within the accounting period and before the next amount due. Anything other than this will lead to more hardship and perhaps start a downward spiral on the ability of the customer to manage all debts.

Officers will be able to intervene in the recovery cycle in appropriate circumstances to deal with hardship or dispute situations. This includes the ability to make deferred payment arrangements where immediate payment is impossible due to lack of means. Recovery procedures should not be so rigid as to:-

- Cause unnecessary hardship
- Prevent an individual approach and flexibility where appropriate

Equality and diversity considerations will be taken into account in accordance with the Council's Equalities Policy. Specifically staff seeking to recover debts will have regard to:

- Ensuring information is accessible through translations, larger print versions or sign language, as appropriate to the needs of the customer
- The need for home visits where the customers are unable to access advice services

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.

The authority will do everything possible to calculate benefit entitlement quickly and accurately.

The Council will encourage people with payment problems to come forward early to discuss their individual circumstances.

The Council welcomes the involvement of welfare agencies where authorised by the customer in connection with debts due to the Council and recognise the benefits that these organisations can offer both the customer and the Council in prioritising repayments to creditors and in maximising income available to the customer.

The Council recognises and values the provision of advice from various agencies and will work in conjunction with them for the benefit of the customer. The list of agencies will include;

- Age UK
- Citizens Advice Bureau (CAB)
- Shelter
- Money Advice Organisations such as the Money Advice Service, the National Debt Line, Gov.uk etc

In cases where there are multiple debts, the Council will ensure that there is close liaison between departments to provide a corporate approach to the recovery of the amounts owing. Multiple debts are where a customer has significant debts in more than one service area e.g. council tax and housing rent arrears. Such cases can present problems in determining the relative priority of the individual debts for both the individual concerned and the staff preparing settlement.

Overall the Council's approach will be a proactive one to provide for multiple debt payment. In assessing the payment we will have regard to:

- The size of the debt
- Its relative priority, a decision needs to be made as to the Council's priority of debt management and allocation of payments.
- Consequences of failure to pay
- Circumstances of the customer
- Increases in the debt

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 recovery procedures.
- Set priorities for specific areas of debt and assess recovery methods to ensure maximum recovery.
- Regularly review irrecoverable debts for write-off.

All accounts that are written off will be written off against the income code against which they are raised.

Where external Enforcement Agents, i.e. bailiffs, are employed to assist with the delivery of a service, the flow of information between the Council and the agency should, wherever possible, be in a secure electronic format and strictly in accordance with the national standards for Enforcement Agents.

Where legislation permits, the Council will seek to levy and recover from the customer any and all costs/fees that are legitimately due from the customer to the Authority or its agents. Only in exceptional cases, where it would not be in the public interest to pursue costs/fees will they be waived. These cases would need to be referred to an Enforcement Team Leader or, where appropriate, a Partnership Manager.

Where either national or local performance indicators exist the Council will strive for top quartile performance and will publish our actual performance against these targets as required. Progress reports will be made available at regular intervals during the year.

We will ensure enforcement staff are adequately trained to deal with the public or their authorised representatives and provide clear advice on recovery matters. They will also refer customers to the appropriate benefits officer to provide advice and guidance on Council Tax Support and other Welfare Benefits.

We will also ensure that staff are provided with the names and contact details for Money Advice agencies in order to signpost customers to the most appropriate independent specialist advice and debt counselling.

General Enforcement Principles

The Council will follow the principles outlined below for Council Tax, Business Rates and Benefits Overpayments:

- Our action will be **proportionate**, allowing for a balance to be struck between the potential loss of income to the Council and the costs of compliance
- Our approach will be **consistent**, taking a similar approach in similar circumstances to achieve similar ends; this needs to be maintained, whilst at the same time taking into account the specific circumstances of each case.
- Our actions will be **transparent**; 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/enforcement action.

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

The Council will always promote Direct Debit as the preferred method of payment.

5.0 The Council's Recovery Processes for Council Tax and Business Rates

All recovery procedures are prescribed by statute and must be followed in accordance with the relevant Act and regulations.

Council Tax and Business Rates Recovery Procedure

A bill is issued giving 14 days notice of the first instalment.

Reminders will be issued on a monthly basis where the instalments have fallen into arrears. If a payment is not made within 7 days of the reminder then further action will commence.

If no Council Tax is paid within 7 days of the reminder, then a Summons will be issued for the balance of the remaining year's charge, also incurring court costs to the customer.

If the customer pays after the first reminder but then defaults a second time, a second reminder will be issued. If payment is not received following the second reminder, a statutory Final Notice must be issued before a Summons can be sent. The Final Notice advises that they have lost their right to pay by instalments and allows a further 7 days for payment of the remainder of the full years charge.

For Business Rates, no further reminder need be issued if a payment is not received during the 7 day period following the first reminder notice. It will progress straight to a Summons.

A complaint is laid before the Local Magistrates Court for a Summons to be issued. The Summons contains the electronic signature of the Clerk to the Magistrates Court.

Summonses should be issued by first class post, giving at least 14 days (plus time allowed for postage) notice of the Court Hearing. Court Costs are incurred at this point by the customer and will be included on the Summons. The Council must pay the Magistrates Court a specified fee for each Summons issued.

At the Court Hearing, Magistrates can only consider the 'liability to pay' of anyone appearing before the court. If the liability is proven or not contested and the customer has no legally valid defence, the Magistrates must grant a Liability Order.

Post Liability Order Enforcement Action

Once the Liability Order has been obtained from the Magistrates Court, the Council has a number of initial enforcement remedies available to them, which may include:

Council Tax Only

- Prosecution for failing to provide financial information
- Attachments of Earnings
- Deductions from DWP Benefits
- Attachment of Members' Allowances
- Enforcement Agent (Bailiff) Action
- Prosecution of employers for failing to implement Attachment of Earnings

Business Rates Only

- Enforcement Agent (Bailiff) Action

Requests for Financial Information

The Council, or their Enforcement Agents, may request certain relevant information from a customer, in relation to his or her employment, particularly the name and address of any employer and level of earnings and deductions. Customers are under a legal obligation to provide this information. If the information is not returned within 14 days a fine may be imposed.

Attachment of Earnings

Where the Council is aware of a Council Tax payer's employment details they will, in most cases, issue an order to the customer's employers to make deductions from their earnings. Employers are legally required to comply with the order and may deduct a nominal charge which is defined in law for each deduction made towards the costs of administering the order.

The amount being received under the order will be reviewed on a regular basis and where it is felt that this is insufficient to clear the debt outstanding within a reasonable time, the Council may either request a further attachment to earnings order to be made (maximum of two) or cancel the attachment and take alternative action to recover the amount due.

In cases where a customer will suffer hardship because of an attachment order, the circumstances of individual cases will be considered with a view to taking alternative action. This will usually be an arrangement to pay a lower amount than that prescribed under an attachment order which is acceptable to the Council. An attachment to earnings will only be cancelled in exceptional circumstances where suitable alternative action can be agreed.

Deductions from Welfare Benefits

In Council Tax cases, the Council may apply to the Department for Work and Pensions (DWP) for deductions to be made from DWP Benefits. The DWP regulations specify the fixed weekly amount deductible.

Deductions from Members Allowances

In Council Tax cases, the Council may apply to deduct amounts from Member's allowances. The sum to be deducted under the order is an amount equal to 40% of the aggregate attachable allowances payable to the debtor.

In addition to the steps that may be taken directly against a local authority member who is in arrears with amounts of council tax, **Section 106 Local Government Finance Act 1992** imposes a duty on a councillor whose payments are two months overdue to make a declaration to that effect, and to refrain from voting, at any meeting where certain financial matters are being dealt with.

Enforcement Agent (Bailiff) Action

Following the granting of a Liability Order, where a customer fails to make contact with the Council or fails to make or maintain a payment arrangement (including orders under attachments to earnings or deductions from benefit) the Council may issue instructions for an Enforcement Agent to visit the property.

At all times the Enforcement Agent will work to the Ministry of Justice 'National Standards for Enforcement Agents 2012' (See link to the Standards in Appendix 2), their own Code of Practice, the Council's Vulnerability Criteria (Appendix 1) and any Code of Conduct/Service Level Agreement the Local Authority may have in place.

Fees and charges associated with Enforcement Agent action will be charged in accordance with levels set out in the legislation. All charges associated with recovery will be kept regularly under review to ensure they are reasonable. Customers will be advised in writing at least 14 days prior to the visit and at the time of the visit by the Enforcement Agent of the amounts of fees that may be charged.

The Enforcement Agent may make an acceptable arrangement with the customer to repay the sums due or enter into a 'Taking Control of Goods' agreement on goods owned by the customer to satisfy the amount outstanding. 'Taking Control of Goods' is where the Enforcement Agent secures the debt against assets owned by the customer.

Actual removal and sale of goods will only take place in exceptional circumstances. All efforts will be taken in order to make an arrangement to pay including the obtaining of employment or benefit information that may lead to an order being made under an attachment to earnings or deduction from DWP benefit.

The Enforcement Agents work on behalf of the Local Authority. In the event of a complaint from the customer the Local Authority takes responsibility for undertaking a full investigation into the complaint, with a requirement that the enforcement company undertake their own review of the issues raised and respond to the Local Authority within corporate timelines.

Further recovery options available to the Council

Where the above forms of recovery action have either been unsuccessful, are not considered to be appropriate, or the customer has failed to make contact with the Council, the Council may pursue other recovery options that may have more serious implications for the customer.

These actions are:

- Committal Proceedings
- Charging Orders
- Insolvency (Bankruptcy or liquidation)

Any action to recover amounts by these methods will be considered on its merits on an individual case by case basis, having regard to the 'Recovery Checklist' completed by the Council's Enforcement Officers. This will include the following:

- A record of other actions already taken and reasons for why alternative methods of recovery are not appropriate, and
- Where little or no personal contact has been made details of at least one visit to the property, and
- A record of information gathered and the reasons for the proposed action.

In addition, the Council will have regard to the Vulnerability Criteria in Appendix 1 to assist in making decisions at all stages of recovery and in particular where an option such as bankruptcy is being considered.

Documentation issued to customers will include:

- Clear written warnings listing the consequences of failing to respond to the letter or notice,
- A date by which they must respond, and;
- Recommendations that customers suffering financial difficulty contact their local Citizens Advice Bureau, Business Support Agency or a Debt Advice Agency for debt advice.

Means Enquiry / Committal Proceedings

Committal proceedings can only be taken against a customer where the Enforcement Agent has certified there are insufficient goods on which to levy distress and may only be taken against individuals and not limited companies.

Where committal action is considered to be appropriate, the Council will write to the customer inviting them to attend an informal interview with Council Officers to discuss their financial and personal circumstances to resolve the matter to the satisfaction of the Council without the need to commence proceedings. This will be at a pre-arranged date and time.

Where the customer fails to respond or the Council is unable to agree arrangements to discharge the debt, the Council will apply to the Magistrates Court for a warrant with bail to be issued which requires the customer to attend the Magistrates Court, for a 'pre- means enquiry' hearing.

At the hearing the customer is given the opportunity to discuss their personal and financial circumstances to resolve the matter to the satisfaction of the Council without the need for a full means enquiry. On completion of the hearing, the Magistrates, with the assistance of Council Officers, will determine whether a full means enquiry is necessary.

Where a full means enquiry is required the customer will be advised that it would be prudent to seek legal representation at the hearing.

Where the customer does not attend Court on the day of the 'pre-means enquiry' hearing the Council will ask for a warrant without bail to be issued for a further hearing at the Magistrates Court for a full means enquiry to be carried out to see whether the non payment is due to 'wilful refusal' or 'culpable neglect'.

At the hearing the Magistrate may sentence the customer to a term of imprisonment not exceeding three months. The sentence can be suspended on whatever terms the Magistrates consider appropriate (usually on payment of a weekly or monthly amount). If the Magistrates decide that failure to pay was not due to wilful refusal or culpable neglect they have the power to remit all or part of the debt.

If a term of imprisonment is served, the relevant amount of Council Tax will be written off as irrecoverable. A part payment will also reduce the term of imprisonment by the ratio of payment to the total amount of the debt.

The majority of committal cases will be where there has been persistent refusal or avoidance of payment and the Magistrates will usually impose a suspended sentence and order the customer to make monthly or weekly payments. In these cases, actual imprisonment will only occur when there has been default on payment of such an order.

Charging Orders

Non-payment of Council Tax

The Council may make an application to the County Court for a charging order to be registered against a customer's property, where the amount of council tax outstanding is over £1,000. The costs associated with this type of action are high, and may be added to the amount of the order.

Following the granting of a charging order, if the debt is not paid the Council may apply to the County Court for an order for sale, which may result in the property being sold and the amount subject to the charging order, including costs, being paid from the proceeds of sale.

Non-Payment of Business Rates

The Charging order option is not available under the 1989 Regulations in respect of business rates. However if a customer(s) owns their business premises and are intending to sell the property, the Council may seek their agreement to registering a charge against their interest in the property. This means that they agree that the Council will be paid any rates due from the proceeds of the sale of the property. The Council will not attempt to recover any amount due which is covered by the agreement for a specified period. This period cannot be more than three years. Any amounts covered by the agreement may be subject to interest charges.

Insolvency

Bankruptcy

This option is only available where the customer is an individual. This course of action is not only administratively costly for all parties but can also have considerable impact both on the customer and members of the customer's household. Consequently, this will only be considered where:

- There has been repeated default in other types of recovery action.
- Other forms of recovery action are not appropriate.
- The customer owns the property which is the subject of the Council Tax or Business Rates or a second property and where the equity is likely (so far as the Council can assess) to be sufficient to cover both the amount of the debt and the costs of the bankruptcy and sale.
- The debt outstanding is above £2000.

No bankruptcy proceedings will take place without attempting to contact the customer or their representative.

The council will liaise with other council departments, public agencies or third sector organisations in order to ascertain the circumstances of the customer before pursuing this action.

A statutory demand will be served on the customer setting out the debt outstanding, and the options available to them to prevent further action, the time scales in which they need to respond (21 days), and direct contact details of officers dealing with the case. A guide to bankruptcy is available at www.gov.uk. No additional costs are incurred at this stage, and the Council may agree a payment arrangement with the customer.

Where, after 21 days, the customer has not responded to the statutory demand or the Council is unable to agree arrangements that will discharge the debt, the Council will consider whether a petition for the customer to be made bankrupt should be issued.

Before a petition is issued, the Council will make all reasonable attempts to find out what the customer's personal and financial circumstances are to determine whether they or other members of the household may fall within the Council's Vulnerability Criteria as described in Appendix 1. A petition for bankruptcy will only be taken after a full case file is presented to, and authorised by, a Partnership Manager.

Where, from information provided by the customer or their representative, or other sources there is evidence to suggest that the customer or other members of the household fall within the Council's Vulnerability Criteria the case will be reviewed by an Enforcement Team Leader to confirm that bankruptcy is appropriate.

Where the Council considers that bankruptcy action should continue, a petition will be served on the customer, advising them of the date and time of the bankruptcy hearing. The serving of a bankruptcy petition will result in significant costs being incurred.

It is essential that the customer attends this or any adjourned hearing to make representation to the judge as to why the order should not be made. Where the customer fails to attend, the Court will determine whether the issue of a bankruptcy petition should be made. Once the order has been made the matter will be referred to the Official Receiver for Trustees to be appointed.

Liquidation

Where the customer is a limited company the same criteria as for determining whether bankruptcy action is appropriate will be undertaken.

In appropriate cases, a formal request for payment will be sent to the customer advising them of the impending action and the consequences of this action being successful.

No additional costs are incurred at this stage, and the Council may agree a payment arrangement with the customer.

Where, after 14 days, the customer has not responded to the formal request or the Council is unable to agree arrangements that will discharge the debt, the Council will consider whether a petition for the winding up of the company should be issued.

Where a petition is served on the customer this will notify them of a date and time of the hearing in the High Court. The serving of a petition will result in significant costs being incurred.

It is essential that the customer attends this hearing or any adjourned hearing to make representation to the judge as to why the winding up order should not be made.

Where the customer fails to attend this will generally result in the company being wound up.

Once the company has been wound up the matter will be referred to the Official Receiver for a Liquidator to be appointed.

6.0 The Council's recovery procedures for Housing Benefit Overpayments

Initial recovery stages

When a housing benefit overpayment is created, the benefits assessor will initially check to see if the overpayment can be recovered from ongoing benefit. The amount of the deduction will be based on the benefit entitlement of each individual at the level prescribed in legislation.

If the customer is no longer in receipt of housing benefit the benefits team will raise an invoice requesting payment of the overpayment amount.

The customer has 14 days in which to pay in full or contact the Council to discuss a suitable payment agreement.

If payment or contact is not received, a reminder is issued. The reminder requests payment or contact within 14 days.

If no payment is received, the process is followed again with a second reminder ('Letter Before Action') being issued, allowing the customer a further 14 days to pay the amount outstanding or to contact the Council to make an agreement to pay. This notice informs the customer that should payment or contact not be received, the Council may commence civil proceedings through the County Court to obtain a County Court Judgement (CCJ) against them.

Prior to statutory methods of enforcement being taken, officers may use, where cost effective to do so, external collection agents, visits to the customer's home by designated Council Officers and telephone contact with the customer as an alternative means of recovering housing benefit overpayments.

All action taken in regard to housing benefit overpayments will be proportionate to the size of the debt outstanding and the Council will take into account the financial and personal circumstances of the customer when determining the appropriate form of action to take.

The level of debt and the circumstances of the customer may mean that it is either uneconomical for the Council to recover the debt, or it would cause a severe detrimental impact on the customer's wellbeing for the Council to continue recovery action. In these circumstances, the debt will be put forward for write off.

Housing Benefit Overpayments - Payment Agreements

If the customer contacts the council to make a payment agreement the following steps will be taken

- Review the customer's account to ascertain the level of debt outstanding
- Depending on the size of the debt and the circumstances of the customer, make an agreement over a period not exceeding 12 months. Build in three or six monthly review periods as required.
- If the above time scales are not feasible, request the completion of a full income and expenditure form from the customer.
- On return of the income and expenditure identify essential and non essential expenditure and determine a suitable payment plan for the customer.
- Set up the agreement on the system. Advise the customer in writing of the proposed payment agreement.

Once the agreement is in place, should the customer default on the agreement an agreement reminder will be issued requesting payment within 7 days. If payment is not made, an agreement termination letter will be sent after a further 14 days.

Once an agreement has been terminated, checks will be made against the DWP's Customer Information System, (CIS) to identify if the customer is in receipt of other welfare benefits. If they are, a request for a deduction from benefits will be sent to the DWP. The DWP will then deduct a legally prescribed amount from their benefit which will then be paid over to the Council.

Enforcement Options

Where a deduction from benefits is not possible, subject to a CCJ being obtained (this is required for most of the options listed below), all other statutory methods of enforcement of debts shall be available for use. These include:

- Attachments of Earnings (deduction of customer's wages, at source by employer)
- Warrants of Execution (the use of County Court bailiff, or High Court sheriff)
- Third Party Debt Orders (utilises the customer's bank account to extract payment)
- Charging Order (the debt is secured on the customer's house)
- Insolvency (petition for bankruptcy)

In order to pursue the above actions, a CCJ must be obtained in the County Court. Once a CCJ has been obtained the customer has 28 days in which to pay the debt in full before the CCJ takes effect. If payment is not received, the Council can return to the County Court to 'enforce the judgement'. In doing so, the Council may then utilise the enforcement remedies listed above.

Civil proceedings are only undertaken as a last resort as often the circumstances of the customer are such that it is not in their, or the Council's financial interests, to further pursue the debt. At each stage of the civil process a court fee is payable which the Council has to pay in order to take the action. The fee is then added to the customer's debt. It is not always possible to recover the debt/costs, therefore the Council will judge each case on its merits before taking this action.

7.0 Absconders

Where a customer leaves a property without notifying the Council of their forwarding address the Council will make every effort to trace their current whereabouts and to collect the amount outstanding.

This will include, where permitted by law, the sharing of information between other Council departments and the use of external tracing agencies.

8.0 Write Offs (all debts)

The Council recognises that where a debt is irrecoverable, prompt and regular write off of such debts is good practice.

The Council will seek to minimise the cost of write-offs to the local Council Tax and Business Rates payers by taking all necessary action to recover what is due. All debts will be subject to the full recovery, collection and legal procedures as outlined in this policy.

Irrecoverable debts will be referred to the authorised signatory at a pre-agreed frequency and in a pre-agreed format, in accordance with the Council's write-off policy document approved in 2012/13.

The limitations for writing off irrecoverable debts are those contained within the Council's Financial Regulations.

Appendix 1 - Vulnerability Criteria

A failure to maximise collection of Council Tax, Business Rates and Housing Benefit Overpayments will potentially put Council services at risk and increase the likelihood that customers who do pay on time will have to subsidise non-payers through future increases in the level of Council Tax.

The Council recognises that some customers will, due to their individual personal and financial circumstances have extreme difficulty in paying their council debts, and recovery action, particularly where an option under section six of this policy is being considered, may not be appropriate where these suggest the customer or other household members may be vulnerable in some way. The Council will ensure processes are in place to ensure that due regard is given to this group of customers.

A person may be considered vulnerable in the following circumstances. The list is not exhaustive and each case will be decided on its own merits:

- The person is elderly
- The person is seriously ill, suffers from mental ill health or has physical disabilities
- The person has communication or learning difficulties
- The person has young children and where there is severe deprivation
- The person has recently experienced a long term relationship, marital or civil partnership break up
- The person has recently been bereaved or made unemployed
- The person has difficulty in understanding written or spoken English.

Falling into one of these categories does not automatically mean that recovery action is not appropriate. The Council will make individual decisions based upon the individual circumstances of the customer to identify if recovery action is appropriate and, if so, what action to take.

Different recovery proceedings cannot be applied simultaneously to one customer, but can be applied subsequently if a debt remains outstanding. The choice of recovery action is made at the discretion of the Council's Enforcement Officers and will take into account the customer's circumstances on a case by case basis and the guidance within this Policy.

The Revenues Service may become aware of vulnerable customers following contact from the customer, their representative or once recovery action is instigated. Alternatively, this information may become available from other internal systems used by the Council, from other departments or from other support agencies.

Where the Enforcement Agent on visiting the customer has vulnerability concerns, he/she is required to return the case to the Council in order for the Council to decide upon the most appropriate recovery action.

The Government are currently consulting on enforcement reforms and may soon issue revised guidance on vulnerability. Should this occur, this Appendix will be updated to reflect the Government's latest position on vulnerability.

Appendix 2 – National Standards for Enforcement Agents 2012 and Bailiff Code of Practice.

The National Standards for Enforcement Agents 2012 can be found by going to:

<http://www.justice.gov.uk/downloads/courts/bailiffs-enforcement-officers/national-standards-enforcement-agents.pdf>

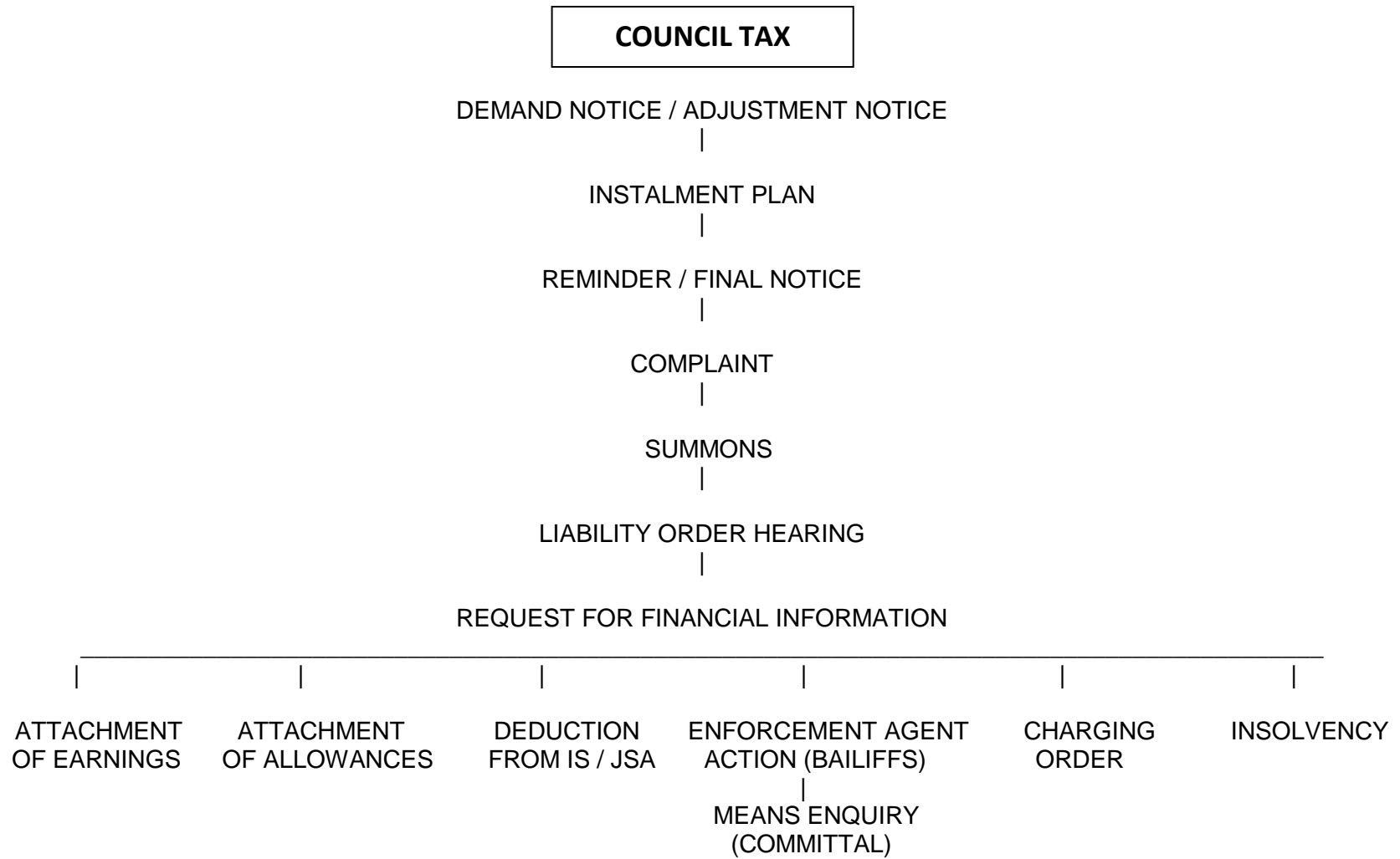
Bailiff Code of Practice

The company recognises its responsibility, both as an employer and as a service provider, to seek to ensure that it provides fair and appropriate treatment for all.

Key Objectives

- All staff will act in accordance with current legislation, regulations and within client guidelines and are trained to be courteous and professional at all times
- Bailiffs employed by the company are of professional appearance and all carry an identity card bearing a photograph, which is to be produced when they meet with a debtor.
- Where the bailiff does not meet the debtor then any documentation left at the property will be in a sealed envelope marked 'private and confidential'.
- All notices and letters issued to debtors are designed to be clear, informative and as unambiguous as possible.
- Bailiffs and staff will be alert to any cases of vulnerability and refer such cases to their bailiff manager or client where there is potential cause for concern.
- If the only person met at a property is a child (who appears to be under the age of 18), no attempt will be made to gain access to the property. If a bailiff has gained access to a property before discovering a child is present without an adult, they are instructed to withdraw.
- Care is taken when making enquiries and we attempt to be discreet but it must be understood that the Data Protection Act does not guarantee total confidentiality in all circumstances. All information is handled in accordance with the Data Protection Act
- Goods will not be removed whilst a current payment arrangement is being maintained.
- Disputes will be resolved in accordance with company procedures. Complaints may ultimately be referred to the Civil Enforcement Agency (CIVEA).

Appendix 3 – Recovery Flow Chart 1



Appendix 5 – Recovery Flow Chart 2

