

## **Corporate Debt Collection Policy**

**Cabinet Member** Cllr Neal Davey  
**Responsible Officer** Head of Finance

**Reason for Report:** Updated Corporate Debt Collection Policy.

**RECOMMENDATION(S):** The Revised Policy be noted and approved (see Appendix A).

**Relationship to Corporate Plan:** Maximising income for the Council is essential particularly during current financially challenging years. It is important to have a policy that is clear and transparent to ensure any recovery action is timely and proportionate.

**Financial Implications:** Effective administration reduces the risk of irregularities and supports delivery of effective, efficient and economical services. Poor debt collection has an impact on cash flow and results in less funding to provide services.

**Legal Implications:** This policy should ensure that each debtor is treated fairly and minimises the risk of legal challenge.

**Risk Assessment:** There is a potential reputational risk should the policy not be adhered to.

### **1.0 Introduction**

- 1.1 The existing Corporate Debt and Recovery Policy was approved by Members on 1 March 2007.
- 1.2 A review of the policy has been carried out by officers to reflect recent legislation changes and in light of economic and resource issues.
- 1.3 The Council's Financial Regulations provide the framework for managing the authority's financial affairs and contribute to good corporate governance, internal control and the management of risks.

### **2.0 Review**

- 2.1 Over the past few months officers from various services (Housing, Customer First, Revenues and Benefits), formed a working group to review the recovery procedures with a view to improving efficiency.
- 2.2 Moneywise, CAB, CHAT, Age UK and other voluntary agencies were consulted on the policy and their feedback has been used in the creation of the updated version of the policy.

### **3.0 Findings**

- 3.1 The current policy suggests money/debt advice should be given by officers, however customers should be signposted to appropriate debt advice agencies licenced and governed by the Financial Conduct Authority (FCA).
- 3.2 The new policy would need to include procedures suggested in the Local Government Ombudsman guidance 'Can't Pay Won't Pay?-Using bankruptcy for council tax debts'.
- 3.3 New legislation came into force from April 2014 regarding Enforcement Agents.
- 3.4 Whilst suggesting officers should communicate across services about customers with multiple debt(s), it was recognised the procedures for doing so needed to be improved.
- 3.5 Each service had different formats for gathering details of income and expenditure when considering the terms to settle debts. A 'common financial statement' would provide a consistent and fair approach.
- 3.6 The procedures for each service are subject to different legislation and do not necessarily change at the same time.
- 3.7 The policy could be revised to help with instances of 'multiple debt'.

### **4.0 Outcomes**

- 4.1 The new Corporate Debt Collection policy has been created (Appendix 1) to take the above findings into account.
- 4.2 The procedures for each service are now separate to the Policy allowing them to be updated in line with legislation changes which do not require member approval and these can be approved by the Head of Finance.
- 4.3 A copy of the new policy has been sent to CAB, CHAT and Moneywise and other voluntary organisations and positive feedback has been received.
- 4.4 A single income and expenditure form should be introduced to ensure consistent approach.
- 4.5 The Head of Finance will review the implementation of the new policy in six months.

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**Circulation of the Report:** Management Team and Cllr Neal Davey

**List of Background Papers:** Copy of Debt Collection Policy (Appendix A)

## Debt collection policy

### Version Control Sheet

*Title:* Debt collection policy

*Purpose:* To provide an agreed debt collection policy that maximises the income available to the Council but is not so prescriptive that it does not allow for arrangements to be made on terms that are fair to those having payment difficulties.

*Owner:* Andrew Jarrett, Head of Finance

*Date:* July 2014

*Version no.:* 1.4

*Status:* draft

*Review*

*Frequency:* Every three years

*Next review*

*date:* 2017

*Consultation:* Local voluntary groups.

### Document History

This document underwent consultation with:

- Tenant Scrutiny & Improvement Group
- Voluntary sector

The following approvals were obtained:

- Chief Executive
- Management Team
- Members
- Legal Department

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## Introduction

- 1.1 This document sets out the Council's approach to setting income collection targets and debt management arrangements.
- 1.2 Sums due to the Council can be a mixture of statutory and non-statutory charges. The method for billing and recovery of the statutory debts is tightly prescribed by statute. The Council needs to maximise income to ensure that it can continue to provide responsive services to local people. However, some people may, for whatever reason, find themselves experiencing financial hardship and it is important that recovery procedures reflect an understanding of this and are flexible enough to enable officers to respond in a sensitive way to individual circumstances.
- 1.3 Council policy relating to the collection of debt must be fair and transparent. It must also be applied consistently. The full range of collection and recovery methods must be used, as appropriate, if debts are not paid. All personal information will be fairly and lawfully used and in accordance with relevant legislation including relating to Data Protection and Human Rights.
- 1.4 The Council will set reasonable fees and charges which reflect strategic priorities. Customers should be given every opportunity to pay any sums due. Officers will make every effort to contact customers at an early stage in order to prevent debts increasing and to encourage discussion about payment plans and any possible issues which may prevent payment. If customers cannot see a proactive approach to the collection of debt, they may give repayment low priority and this can lead to a downward spiral where late and non-payment becomes normal. This can lead to cash flow problems and possible damage to the reputation of the Council. In addition, unless a payment culture is established, there is a risk that the level of debt will increase leading to sums which cannot be collected and/or which it is uneconomical to pursue, and the income will be lost to the Council. This is unfair to all those customers who do pay their bills on times.
- 1.5 Our aims:
  - To recognise that customers have a responsibility to pay and that debts must be met
  - To maximise income for the Council
  - To be firm but fair
  - To be consistent
  - To be efficient but also sensitive to the needs of the customer
  - To inform debtors about any sums owed promptly
  - To contact debtors about non-payment at an early stage
  - To offer different payment options/methods
  - To offer advice in order to prevent debt increasing
  - To signpost and/or refer debtors to other agencies, where necessary

- To give advice on increasing income and reducing expenditure, if appropriate
- To be realistic about setting repayment amounts over reasonable periods of time
- To avoid putting pressure on debtors to make arrangements which are unrealistic and which cannot be sustained in the longer term
- To recognise the difference between priority and non-priority debts
- To promote a “joined up” approach to sharing information and managing the different debts owed to the Council
- To achieve a fair balance between the claims of competing creditors that enables customers to clear priority debts
- To recognise that in some cases it is not possible, or it is inappropriate, to collect a debt owed to the Council.

1.6 This Policy sets out the general principles to be applied in relation to debt management across all services provided by this Council. It is to be used together with all related policies and strategies and with more detailed procedural guidance for staff. It will apply to all debts owed to the Council, including:

- Council Tax
- Business Rates
- Rents for Council homes and garages and commercial properties
- Benefit overpayments
- Legal Costs
- Section 20, (Planned maintenance charges for leaseholders)
- Commercial waste
- Community infrastructure levy and monies arising from s106 agreements
- Sundry debts
- Other miscellaneous income.

## **2.0 Policies Common to all Types of Debt**

2.1 When notifying customers about sums owed, the Council will send information regarding the amount payable and a description of the charge. It will also include:

- Information on the payment options available
- A contact number for queries and also for discussing payment arrangements where the customer is unable to make the payment immediately, for whatever reason.
- A fair processing notice to the effect that ‘your information may be shared with other council services and agencies for use in credit decisions, for fraud prevention and to pursue debtors’

- 2.2 The Council will ensure that:
- There are procedures in place to provide an opportunity for early intervention to reduce the likelihood of the debt increasing
  - There is a clear recovery process which is understood and implemented fairly and consistently by the Council and any partners and/or contractors
  - Each Service has its own adopted policies, agreed procedures and fair processing notices setting out how debts will be recovered. These documents will comply with all relevant legislation, good practice and/or regulations and will be implemented by officers who will be given appropriate training to enable them to do so
  - Officers will give appropriate advice and support.
- 2.3 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 Direct Debit, which offers value for money because the transaction costs are much lower.
- 2.4 Assessment of an ability to pay will be made and debtors will be asked to agree their information is shared across services in the Council. This will ensure a fair and realistic approach when making arrangement for repayment . An example of the common financial statement is attached as an Appendix A.
- 2.5 Authorised 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.
- 2.6 Information will be available in different formats in order to ensure no one section of society is disadvantaged in any way. In addition, 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 debtor.
- 2.7 Where appropriate, home visits can be made where the debtors are unable to access advice services.
- 2.8 Where the potential for a statutory benefit or discount exists in relation to the debt, efforts will be made to make the debtor aware of such opportunities. They will be assisted and encouraged to apply for these including a request for backdating if appropriate.
- 2.9 All correspondence relating to the debt sent by the Council will comply with the corporate style guidance and be readily identifiable as being from the Council. It will set out what is owed and will invite the customer to contact the Council at

the earliest possible opportunity. All such correspondence will be written in plain English and will signpost customers to organisations which can provide independent advice. Customer response using a range of different methods including by letter, telephone, email, via the website or through advocates or representatives will be positively encouraged.

- 2.10 The Council welcomes the involvement of welfare agencies, where authorised by the debtor, in connection with debts due to the Council and recognises the benefits that these organisations can offer both the debtor and the Council in prioritising repayments to creditors and in maximising income available to the debtor.
- 2.11 In cases of multiple debts, there must be close liaison between Services. Multiple debts are where a debtor has significant arrears and owes more than one debt to the Council. This may include housing rent, council tax and housing benefit overpayment. Such cases can present problems in determining the relative priority of the individual debts for both the individual concerned and the officers working out payment plans with the customer.
- 2.12 In such cases, officers are expected to liaise and agree an appropriate means of coordinated recovery which reflects these policy aspirations, together with the need to balance repayment profiles across all debts due to the Council. Officers should endeavour to liaise with colleagues in other Services, if appropriate, to discuss cases where customers may be experiencing difficulty paying their bills.
- 2.13 The Council recognises that prompt recovery action is key when 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.
- 2.14 There are many types of debt and these are commonly identified as priority or non-priority debts by those who give advice and support to people experiencing financial difficulties. A priority debt is generally considered to be one where the creditor can take the strongest legal action against an individual who does not pay. The size of the debt will not be the issue, it is what the creditor can do to recover any outstanding money.
- 2.15 When someone is experiencing money problems they are not always aware of the consequences of non-payment and frequently pay those who commence the strongest action.

- 2.16 Officers will explain the difference between priority and non-priority debts when discussing income and expenditure and working out payment plans.
- 2.17 The following will be treated as equal priority debts:
- Rent arrears because they could result in eviction
  - Mortgage arrears because non-payment could lead to repossession of the home
  - Council Tax because it can result in bailiff action/ attachment of earnings/ benefits/charging order/bankruptcy/imprisonment/loss of home
  - Other secured loans as they can result in loss of home.
- 2.18 Other priority debts:
- Income Tax and VAT because they can result in bankruptcy/imprisonment
  - County Court Judgements because they can result in bailiff action/ attachment of earnings/bankruptcy
  - Fines or compensation/costs orders because they can result in imprisonment
  - Hire purchase but only if it has been used to buy a car which enables a customer to get to and from work
  - Maintenance/child support because it can result in repossession of goods/imprisonment
  - Water charges because non-payment can result in bailiff action
  - Business rates because non-payment can result in bailiff action/ bankruptcy/imprisonment
  - Benefits overpayments because they can result in deductions from ongoing Housing and other benefits which affect the level of income received
  - Penalty Charge Notices because they can result in bailiff actions.
- 2.19 The following are considered to be non-priority debts:
- Credit/store cards
  - Unsecured personal loans
  - Bank overdrafts
  - Credit/interest free/hire purchase agreements
  - Catalogue debts
  - Money borrowed from family and friends.
- 2.20 All accounts that are written off will be against the income code against which they are raised. The VAT on written-off sundry debt accounts will only be recovered by the Council in accordance with the rules and procedures laid down by HM Revenues & Customs. In practice this means that VAT on a written-off debt can only be reclaimed 6 months after the debt became due to the date of supply.

- 2.21 Where an external agency is procured 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.
- 2.22 Where legislation permits, the Council will seek to levy and recover from the debtor any and all costs/fees that are legitimately due from the debtor to the Council or its agents. Only in exceptional cases, where it would not be in the public interest to pursue costs/fees, will they be waived.

### **3.0 Principles of Enforcement (all debts)**

- 3.1 The Council is fully committed to ensuring that its actions will be proportional, consistent and transparent. Additionally our intention will be to be firm and fair and our manner will be courteous.
- 3.2 **Proportionality** – proportionality allows for a balance to be struck between the potential loss of income to the Council and the costs of compliance.
- 3.3 **Consistency** – consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency in:
- The advice it gives
  - The use of our powers
  - The recovery procedures used.
- 3.4 The Council recognises that consistency does not mean simple uniformity. Officers need to take account of many variables such as:
- The social circumstances of the debtor
  - The debtor's payment history
  - The debtor's ability to pay.
- 3.5 **Transparency** – transparency is important in maintaining public confidence. It means helping people to understand what is expected of them and what they should expect from the Council. It also means explaining clearly the reasons for taking any recovery/enforcement action.
- 3.6 If action is required, the reasons why must be clearly explained in writing, where required. If action is required, timescales must be clearly stated. A distinction must be made between advice and legal requirements.
- 3.7 Communications should be in plain English and alternative formats should be made available to customers upon request. The Language Line facility is to be used as an aid to improving verbal communications with those customers for whom English is not their first language.

- 3.8 An opportunity must be given to discuss what is required to comply with the law before formal enforcement action is taken. A written explanation must be given of any rights of appeal against formal enforcement action either before or at the time the action is taken. When meeting with debtors, officers will always endeavour to obtain information on income and expenditure. All information will be recorded. *Enforcement Agents* visiting a debtor's home to levy distress are also expected to make attempts to collect information relating to the circumstances of the household, to record it and to pass it back to the Council.
- 3.9 When it is apparent that a customer would be unable to pay a debt or to keep their account up to date, or they are having problems in relation to a number of accounts, officers should attempt to agree an arrangement to pay (where appropriate). Such arrangements should be set up once the specific circumstances of the customer have been reviewed and in consultation with the customer. A judgement about the ability to pay will include an assessment about the income available to the customer once all required living costs have been set aside and the relative size of the debt. The intention should be to set up an arrangement which enables the debt to be cleared as soon as possible. In addition, there should be an understanding that arrangements will only be entered into to ensure that any debts owed to the Council do not increase.
- 3.10 Generally, customers will be expected to clear the current or most recent account while making the maximum contribution to clearing the other debts. Officers will always seek to make realistic arrangements to clear outstanding amounts by regular payments. A financial statement may be required to support a request for an arrangement. This will detail the customer's incomings and outgoings. Officers may ask for more information as evidence of what is contained within the financial statement before they agree an arrangement. An independent advice agency can assist with the completion of the financial statement.
- 3.11 Customers with multiple debts will be offered an opportunity to discuss all the debts with an officer. Different services must liaise to ensure that the response is co-ordinated and any action plan is realistic and achievable. The Council will take practical steps to raise awareness of debt with customers and to raise awareness of the implications of non-payment.
- 3.12 For those who are unable to pay their debts, for whatever reason, the Council will:
- Give advice about what happens if the debts are not paid
  - Signpost the customer to appropriate help and support
  - Encourage the customer to seek appropriate help and support
  - Make referrals to advice and/or other support agencies, as appropriate.
- 3.12.1 The Council will also consider the suspension of existing or future service(s) whilst any existing debts are outstanding.

- 3.13 When working to maximise income, our officers will take into account the needs of each individual customer. What this means, in reality, is that certain people will need more sympathetic and sensitive treatment. In particular, this may mean that allowances are made in cases where a customer has experienced a recent bereavement, a major illness or where they have capacity issues and find it difficult to manage their financial affairs.
- 3.14 The Council recognises that some of the options available for debt recovery could have very severe and far-reaching consequences for debtors and will therefore give due consideration to the circumstances relating to each case before deciding what action to take.
- 3.15 In all cases where bankruptcy, committal to prison or a charging order is considered to be appropriate, there will be a case conference to discuss the individual circumstances of the debtor. This meeting will be arranged by the Senior Manager who will have responsibility for agreeing this course of action. Prior to that meeting, every attempt should be made to speak to the debtor in person and this will include making at least one home visit whenever practical/possible. The meeting will also consider the Council's equality duty and the impact of the proposed action upon the individual debtor and any member of their household.
- 3.16 The debtor will be notified in advance and informed about who will be attending the meeting. Notes recording the discussions which take place during the meeting will be kept, together with the reasons for the decision reached. There must be evidence to show that it was agreed during the meeting that any action taken was both fair and proportionate.
- 3.17 In addition, if bankruptcy is being considered as a means of recovering the debt, the meeting will take into account some additional considerations in terms of whether the action would be fair and proportionate:
- The history of the origin of the debt and attempts to recover it
  - Information regarding the past, present, disputed or outstanding benefit claims or any discounts or exemptions which may be relevant
  - Whether or not the debtor has any assets which would clear the debt if bankruptcy is pursued
  - An assessment of the other options the debtor may have to clear the debt in a reasonable timescale
  - An assessment of the health of the debtor and whether or not their failure to pay has arisen from a disability (including a mental health issue)
  - An assessment of their personal circumstances and whether or not these protect them from the consequences of the proposed action.
- 3.18 If bankruptcy proceedings, committal to prison or a charging order are being considered, the debtor should be provided with written information setting out the serious consequences of this action and their continued failure to make arrangements to pay the debt. They should also be urged to seek independent

advice and “signposted” to local advice agencies which can provide information and support.

#### **4.0 Write Offs (all debts)**

- 4.1 The Council will make provision for bad debts. The Council recognises that where a debt is irrecoverable, prompt and regular write off of such debts is good practice.
- 4.2 The Council will seek to minimise the cost of write-offs to the local council tax and housing rent payers by taking all necessary action to recover what is due.
- 4.3 All debts will be subject to the full recovery, collection and legal procedures relative to the type of debt and staff will follow procedures provided to each service.
- 4.4 Irrecoverable debts will be referred to the Council’s Section 151 Officer (Head of Finance) and the Council’s Financial Regulations will apply.

Debts may be referred for write-off in the following circumstances:

- The debt has been remitted by a Magistrate
- The Council has evidence to confirm the claimant is suffering a severe physical or mental illness which renders enforcement action inappropriate
- The Council is unable to trace the debtor
- The debt is not cost-effective to pursue due to small balance or the circumstances of the customer (for example, they may be in a nursing home or serving a long prison sentence)
- The debt is not cost-effective to pursue due to the likelihood of payment balanced against the cost of proceedings
- The claimant has died and there are no or insufficient funds in the estate to settle the debt
- The claimant is subject to formal insolvency proceedings and there is little likelihood of a dividend

(This list is not exhaustive).

#### **5.0 Policies & Procedures**

- 5.1 Policies and procedures for the following services are on the Council website:
  - Council Tax and Non Domestic Rates
  - Housing

- Housing Benefit Overpayments
- Miscellaneous Income

5.2 These are normally set by Managers and agreed by Heads of Service. They do not require Member approval as they are made in line with relevant legislation.

## 1. DOCUMENT HISTORY

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