

HAMBLETON DISTRICT COUNCIL

Report To: Cabinet
12 January 2016

Subject: CORPORATE DEBT POLICY

All Wards
Portfolio Holder for Support Services: Councillor N A Knapton

1.0 PURPOSE AND BACKGROUND:

- 1.1 The report sets out the Council's approach to collecting and recovering debt owed to the Council by businesses and residents. The Corporate Debt Policy is attached as Annex 'A'.
- 1.2 The policy applies to Council Tax, Non Domestic Rates and Sundry Debts including Housing Benefit overpayments.
- 1.3 The aim of the policy is to develop a co-ordinated approach for a single view of customers' debt where possible and apply best practice for collecting and recovering debts owed. Consideration of the debtor's circumstances and the ability to pay will provide an opportunity for early intervention and reduce the likelihood of arrears increasing enabling the Council to apply the most appropriate recovery action when necessary.
- 1.4 The policy aims to ensure that all employees involved in the collection of debt have a consistent approach and an understanding of what that approach is. This will promote efficient and effective debt collection.
- 1.5 The policy includes existing debt recovery methods such as:
 - payment arrangements;
 - recovery from Housing Benefit;
 - attachment of earnings or state benefits or members' allowances;
 - enforcement action;
 - invoices.
- 1.6 This range of debt recovery methods limits the level of recovery that can be undertaken by officers, therefore the revised Corporate Debt Policy includes more options which are:
 - County Court Action
 - Third Party Debt Order
 - Charging Order
 - Bankruptcy
 - Committal to prison
- 1.7 Further detailed information on each option can be found in the policy attached at Annex 'A'. The individual circumstances of each case will be considered to determine the most appropriate method.
- 1.8 Due to the serious consequences of some of these recovery methods, the Council's Legal Team will be consulted (for example Charging Orders and bankruptcy applications) to determine that the considered course of action is appropriate and proportionate.

- 1.9 With regards to the level of debt that will be recovered, there is a limit to what is considered to be economically viable. **The minimum level of debt to be recovered is £5, with all debt at or below £5 being written off. This is consistent with the Council's current policy and no change is proposed.**
- 1.10 The Council recognises that although a debt is recoverable the Council can use its discretion not to recover the money due and consideration will be given to specific circumstances.
- 1.11 The Council recognises that where debts are irrecoverable it is good practice to write them off promptly and regularly. However if at any point in the future the Council becomes aware that a debt can be collected it will be re-instated where possible.
- 1.12 The Council will seek to minimise the cost of write-offs by having controls in place to limit the amount of debt that arises and taking all necessary action to recover what is due. All debts will be subject to the full collection, recovery and legal procedures as outlined in the policy.
- 1.13 Due to the operational decisions and procedures undertaken in determining the most effective recovery method the Council currently has delegated responsibility for write offs to its S151 Officer – the Executive Director and Deputy Chief Executive - who in turn has delegated a number of officers within the authority to approve write offs up to specified levels. This delegation to the S151 Officer to approve the write off of debt will continue.

2.0 LINKS TO COUNCIL PRIORITIES:

- 2.1 The Council is required to collect debts from both businesses and residents. The money collected enables the Council to provide public services and monies not collected means fewer resources are available for services.

3.0 RISK ASSESSMENT:

- 3.1 There are no significant risks associated with the policy.

4.0 FINANCIAL IMPLICATIONS:

- 4.1 The Council recognises that all debt is recoverable; however, the policy aims to balance the potential loss of income against the cost of compliance and recovery.
- 4.2 Where it is inappropriate to take action against the debtor the delegated write off procedure will be followed as detailed in the body of the report. Where it is permissible to do so, the Council will levy and recover any costs due from the debtor.

5.0 LEGAL IMPLICATIONS:

- 5.1 There are no legal implications associated with the policy.

6.0 EQUALITY/DIVERSITY ISSUES:

- 6.1 The policy recognises that a consistent approach to debt does not mean simple uniformity of procedures and aims to consider the debtor's circumstances and ability to pay, maximising debtors' income where appropriate and sign posting to relevant support agencies.

7.0 RECOMMENDATIONS:

7.1 It is recommended that Cabinet approves and recommends that Council:

- (1) approves the Corporate Debt Policy attached at Annex 'A';
- (2) adopts the new recovery methods as detailed in paragraph 1.6; and
- (3) notes that the Write Off Policy is delegated to the S151 Officer – the Executive Director & Deputy Chief Executive as detailed in paragraph 1.13 of the report.

JUSTIN IVES

Background papers: None

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HAMBLETON DISTRICT COUNCIL CORPORATE DEBT POLICY

1. INTRODUCTION

The purpose of this Corporate Debt Policy is to set out Hambleton Council's approach to collecting and recovering debt owed to us by businesses and residents.

This not only promotes efficiency, effectiveness and consistency in the collection of debt, it is an essential requirement to ensure the maximisation of revenue streams to provide resources which the Council needs to deliver services.

Money that we collect enables us to provide important public services. Income that is not collected or that takes additional effort to collect will lead to one or both of the following outcomes:

- a. Cuts in the budgets available to run Council services; or
- b. The need to generate additional income by increasing fees and charges

Sums due to the Council can be a mixture of statutory and non-statutory charges. The methods for billing and recovery of statutory debts are tightly prescribed by statute and our policy and practices must take these legislative requirements into account.

The aim is to:

- develop a co-ordinated approach for a single view of customers' debt;
- apply best practice for collecting and recovering debt to the Council;
- ensure that the debt has been raised correctly and in a timely manner;
- make sure that residents and businesses are given clearly itemised invoices or bills;
- to consider the debtor's circumstances and ability to pay fully to distinguish between the debtor who won't pay and the debtor who genuinely can't pay;
- develop triggers and measures to provide an opportunity for early intervention and reduce the likelihood of the arrears increasing;
- to improve the levels of income collected by the Council;
- to balance the potential loss of income to the Council against the cost of compliance and recovery.

This policy applies to the collection of:

- Council Tax
- Non-Domestic Rates (Business Rates / NNDR)
- Sundry Debts including Housing Benefit overpayments

2. GENERAL RECOVERY PRINCIPLES

The Council will take into account the following general principles in respect of recovery and enforcement to mitigate the possibilities of inappropriate action and to improve the cost effectiveness of recovery processes:

- Our action will be **proportionate and transparent and consistent in its approach**

Consistency – Consistency means taking a similar approach in similar circumstances to achieve similar outcomes. By adopting a consistent approach for the recovery of all debts it ensures that all debtors will be treated fairly and equally.

The Council aims to achieve consistency in:

- The advice it gives
- The use of its powers; and
- The recovery procedures used

The Council recognises that consistency does not mean simple uniformity and officers will be encouraged to take into account many variables such as:

- the size of debt outstanding;
- the social circumstances of the debtor;
- the debtor's payment history; and
- the debtor's ability to pay.

The Council welcome the involvement of debt agencies in connection with debts due to the Council and recognise 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.

Equality and diversity considerations will be taken into account. Specifically staff seeking to recover debts will have regard to ensuring information is accessible through translations or sign language.

3. RECOVERY POLICIES COMMON TO ALL TYPES OF DEBTS:

The Council recognises that prompt recovery action is key in managing its debt and maximising income. The Council therefore aims to make it easier for customers to pay by making sure they know:

- how they can pay;
- where they can pay;
- to quote the correct references so that their account is credited quickly and correctly.

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" as far as possible based on the information available.

Demands will, wherever possible, be issued as soon as practicable and, if possible, on the day of production.

The Council will attempt at all times to use the most appropriate and effective method of debt recovery in order to maximise income.

Where the potential for a statutory discount, including Local Support for Council Tax, exists in relation to the debt efforts will be made to make the debtor aware of such opportunities and they will be assisted and encouraged to apply for these.

In cases where the debtor is deceased, recovery will be sought from the estate, except when the debtor has died intestate.

When debtors are in prison overpayments will be held in abeyance until release. If the prison sentence is 3 months or more, the debt will be written off (subject to the correct procedures), and then reinstated at a later date, if appropriate.

In the event that a debtor's whereabouts are unknown efforts will be made to trace the debtor. The Council will use various methods of tracing the individual. This will include tools such as Experian database and tracing agencies. The Council is legally entitled to request this information under the Data Protection Act Section 29 for the collection of tax.

Where an external agency is procured to assist with debt recovery the flow of information between the Council and the agency should, wherever possible, be in a secure electronic format.

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 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.

Any disputes raised by a customer in respect of recovery actions taken by the Council will be dealt with by a senior member of the team responsible for the recovery of a debt. If the issue is not resolved to the customer's satisfaction and appropriate legislative appeal avenues have been utilised, the issue will be dealt with through the Council's corporate complaints system.

After applying the various procedures outlined any overpayments that are irrecoverable will be written off as per the Debt Policy.

In undertaking debt recovery it is inevitable that we will be required to pursue the recovery of arrears from residents and businesses that may experience difficulty in paying.

Where a customer is unable to pay in full the customer should contact the Council as soon as possible so:

- that Council's debt recovery staff can discuss the customers' circumstances, to provide guidance and, where possible, consider alternative repayment options such as instalments or extra time to pay;
- the Council will refer debtors to advice agencies for help with money management and debt, where appropriate;
- the outstanding amount can be cleared as quickly as the customer's finances will allow.

To ensure the effectiveness of its strategy the Council will:

- regularly monitor the level and age of debt;
- set clear targets for the recovery of debt;
- have clear written recovery procedures;
- regularly review irrecoverable debts (and those where recovery is not economic) for write off.

4. **METHODS OF PAYMENT**

The Council will encourage the most cost effective payment methods with emphasis being on electronic means where possible.

The Council's preferred method of payment is Direct Debit. However, this does not prohibit accepting payment by other methods.

The Council currently accepts the following forms of payment:

- Direct Debit
- Debit / Credit Card Payments
- Via the Automated Telephone System (ATP); or
- Online via the Council's Website
- Cash
- Cheque
- BACS / CHAPS
- Standing Order

The Council will continue to explore alternative and appropriate methods to engage with debtors in the most appropriate and effective way (e.g. text, email, self-service, barcoded bills, PayPal and Allpay)

The Council does currently pass the cost of credit card charges on to those debtors who choose to pay by credit card.

5. **WRITE OFFS**

The Council recognises that although a debt is recoverable the Council can use its discretion not to recover the money due. Generally write offs will fall into two categories:-

a) **Non recoverable**

This is where the law (which governs the Council's service procedures) determines that it is inappropriate to take action to recover the debt. These cases will never be reinstated

b) **Recoverable but no recovery action to be taken.**

This is where the overpayment is recoverable but the circumstances indicate that recovery would not be appropriate. These will generally fall into two categories:-

Discretionary

This would be where the Council has decided not to recover due to financial or hardship grounds or it is uneconomical to recover. Each case is decided on its own merits after consideration of individual circumstances. These cases will never be reinstated

Standard

This is applicable where the Council has exhausted all available recovery methods unsuccessfully or the debtor cannot be traced. These cases would be reinstated if circumstances changed.

The Council recognises that where debts are irrecoverable it is good practice to write them off promptly and regularly. However, if at any point in the future the Council becomes aware that a debt can be collected it will be re-instated in the accounts where possible.

The Council will seek to minimise the cost of write-offs by having controls in place to limit the amount of debt that arises and taking all necessary action to recover what is due. All debts will be subject to the full collection, recovery and legal procedures as outlined in the following appendices to this policy:

- Appendix 1 Council Tax and NNDR Recovery Policy
- Appendix 2 Housing Benefit Overpayments Recovery Policy
- Appendix 3 Sundry Debt Recovery Policy

As it is uneconomical to pursue the recovery of low value invoices due to the administrative costs involved invoices of £5.00 and under will not be pursued through the courts.

Due to the operational decisions and procedures undertaken in determining the most effective recovery method the Council has delegated responsibility for write offs to its S151 Officer, Executive Director and Deputy Chief Executive, who in turn has delegated a number of officers within the authority to approve write offs up to specified levels. The table below summarises write off authorities

DEBT	OFFICER	LEVEL
Council Tax, NNDR, Sundry Debts, and Housing Benefit Overpayments	S151 Officer	Above £10,000
Council Tax, NNDR, and Housing Benefit Overpayments	Head of Resources	Between £5,000 and £10,000
Sundry Debts excluding Housing Benefit Overpayments	Departments Head of Service in conjunction with Taxation and Benefit Manager	Between £5,000 and £10,000
Council Tax, NNDR and Housing Benefit Overpayments	Taxation and Benefit Manager	Below £5,000
Sundry Debts excluding Housing Benefit Overpayments	Taxation and Benefit Manager in conjunction with relevant Service Manager	Below £5,000

It is not possible to list every scenario which could make a debt suitable for write off, however, the following factors could be appropriate depending on the circumstances:

- the debt has been remitted by a Magistrate;
- the debtor is subject to formal insolvency proceedings and there is little likelihood of a dividend or repayment;
- the charge payer is deceased and there are no funds from the estate;
- the Council has evidence to confirm the debtor is suffering a severe mental or physical illness which renders enforcement action inappropriate;
- the Council is unable to trace the debtor;
- it is uneconomical to pursue the debt due to the outstanding balance being small;

- the cost of proceedings outweighs the likelihood or level of payment;
- there is insufficient or incomplete documentary evidence to back up and pursue the claim;
- the age of the debt renders it statute barred (Statute of Limitations Act).

Where debtors are pursuing personal insolvency, for example bankruptcy or a Debt Relief Order (DRO), those cases will be dealt with following the prevailing case law and regulations.

Council Tax and Non Domestic Rates (NNDR)

The full rate of tax is liable to be paid unless the property, owner or occupier is eligible for a reduction or exemption. The main reasons for reductions include empty property discounts, local support for Council Tax for residents on low income, disregards, single occupancy discounts and property exemptions. Small Business Rate relief, charitable and other discretionary reliefs also apply.

Council Tax and Business Rates are payable in line with a statutory instalment scheme or by agreement. There is a legal duty placed on the Council and its Officers to collect outstanding debts in accordance with the Council Tax (Administration and Enforcement) Regulations 1992 and the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended).

Statutory Instalments

Everyone is entitled to pay their current year's bill by instalments. At the start of the financial year there are 10 statutory instalments April through to January inclusive. Where bills are issued during the year the number of instalments will be reduced. There is also the option to pay by 12 instalments instead of the normal ten.

The Council will bill, collect and recover all debts in an economic, effective and efficient manner in accordance with legislation and best practice.

- Demand Notices and Adjustment Notices will be issued in accordance with regulations;
- a recovery timetable will be drawn up before the beginning of each financial year;
- reminders and final notices will be issued at least 14 days after an instalment has fallen due.

A summons to the Magistrates' Court will be issued if payment has not been made in accordance with the previously issued notice.

If settlement is still not made an application will be made to the Magistrates to grant a Liability Order. Where a Liability Order has been granted there may be additional costs awarded by the Magistrates to collect in addition to the principal debt. A Liability Order must have been applied for within six years of the bill being issued. Once the Council has obtained a Liability Order, the regulations and current case law indicates there is no time limit to pursuing the debt.

Following the granting of a Liability Order, the debtor will be given an opportunity to make a suitable payment arrangement. Should the debtor not make an arrangement or default on a payment arrangement the following recovery action(s) can be taken. The recovery action(s) will be dependent on the circumstances of the individual case

Payment Arrangement

We will consider any proposals from defaulters who wish to make a payment arrangement and we will treat each case on its merits. However, we will always seek to recover the amount due as soon as possible and will usually protect our position in such cases by obtaining a Liability Order at the Magistrates' Court as previously stated in an earlier paragraph.

Attachment of Earnings

This is an Order sent to the liable person's employer instructing them to make deductions direct from the employee's earnings and to forward these payments to the Council. The amount of the deduction is determined by legislation.

Once the Council Tax Attachment of Earnings Order has been served the employer is able to deduct £1 towards administrative costs for each deduction.

The Attachment of Earnings is a legal document and an employer could be liable for a fine if they fail to comply.

Attachment to Members Allowances

If the debtor is a Member of Hambleton District Council then payment of the debt may be secured via an attachment to his/her Member's Allowance. This is undertaken following consultation with the S151 Officer- Executive Director and Deputy Chief Executive.

The attachment operates under the following rules:

- 40% of the allowance is attachable
- The allowances of Members of any of the following authorities may be attached:
 - billing authority
 - County Council
 - certain Police Authorities
 - London and Metropolitan Fire and Civil Defence Authorities

Deductions from Income Support, Job Seeker's Allowance and Employment Support Allowance

If the liable person is in receipt of the prescribed allowance then the Council can apply directly to the Department for Work and Pensions requesting a deduction from these benefits.

Enforcement warning

Before passing a debt to the Enforcement Agents, the Council will make every effort to contact the debtor in order to discuss a suitable payment arrangement and obtain income details including employer/benefit information etc. where applicable. This could include ringing and/or emailing the debtor.

If we do not know the debtor's employer, or we have considered that an attachment of earnings is not appropriate, or we are unable to make a request for deductions from benefit and no special payment arrangement has been agreed, a final enforcement warning letter will be issued. This gives the debtor 7 days in which to pay the debt in full or contact the Council with details of their employment, benefit or other income without delay.

Enforcement Agents

There are three separate stages called compliance, enforcement and sale. Enforcement Agents are allowed to charge a fee for each stage of the process of taking action against the debtor. These fees have been set by statute and are non negotiable.

Compliance fees are incurred when the Enforcement Agent contacts the debtor requesting payment and issuing an enforcement notice.

Enforcement fees are applied if the Enforcement Agent visits a property to take control of goods. Sale fees will be levied in regards to disposal or sale of goods.

Charging Orders

A Charging Order can be applied for at the courts and if successful would be placed on a property to secure the debt. This means that when the property is sold the proceeds would go towards the Council's debt as a priority.

This could be used if the property was intended to be sold.

Alternatively we can request a Force Sale Order which if successful would mean the property would have to be put on the market.

Bankruptcy/Liquidation

This action would be considered if there are sufficient assets to realise and meet the outstanding debt and the debt exceeds that required by legislation. This is one of the final options that the Council would consider.

Committal

If the debt is still outstanding and the liable person does not have sufficient assets to meet the outstanding debt then one of the final options would be to apply for a summons to be issued for the debtor to appear before the Magistrates for an enquiry into his or her means.

If the debtor does not attend court the Council will apply for an arrest warrant and bail initially and then without bail if the debtor again fails to attend.

The arrest warrant with bail will be hand delivered to the debtor and it will specify a time to appear at court. Additional costs incurred will be charged to the debtor.

The arrest warrant without bail will require immediate arrest of the debtor who will be taken and detained pending the hearing at court.

Such action could result in a maximum prison sentence of three months. Recovery of the outstanding debt will continue.

HOUSING BENEFIT OVERPAYMENTS

A Housing Benefit overpayment occurs when someone has been paid more benefit than they are entitled to. The Council's Benefit Section applies the relevant legislation to calculate overpayments and determines whether amounts overpaid are recoverable and, if so, who they should be recovered from. The Benefits Section also determines whether the overpayment will be recovered by making deductions from a claimant's on-going Housing Benefit payments or through the issue of an invoice. The Benefit Section issues decision letters advising those affected of overpayments.

There is a formal appeals process which is detailed in the Housing Benefit legislation. An appeal can be made regarding the amount and reason for the overpayment as well as the decision from whom recovery will be sought.

The decision whether a recoverable overpayment should be recovered, or the method by which an overpayment is recovered, are not decisions that are subject to the appeals process. Appeals are dealt with by the Benefits Section.

Recovery of Housing Benefits overpayments will commence immediately upon the identification of an overpayment. If the liable party wishes to appeal the overpayment recovery may be held in abeyance pending the outcome of the Tribunal hearing.

The full amount of the overpayment will be recovered, unless, after having regard to the health, personal and financial circumstances of the debtor it is deemed that a lesser amount would be more appropriate. In these instances, the decision will be documented and approved by the Taxation and Benefit Manager

Consideration will always be given to the amount of the debt, the cost of action, and the likely outcome of the action. Efforts of staff to recover overpayments should follow the most appropriate action depending on the individual circumstances of that case. Staff will follow the internal Overpayment Recovery Policy and methods used will be appropriate, efficient and focused at the least cost to the Council.

There are several different methods of recovery available to the Council. In deciding the most appropriate method it is important to note whether or not the liable person is a claimant or a landlord as there are different methods of recovery available. Methods of recovery available relating to individuals are shown below. These methods will generally be applied in this order of priority:

Deductions from Housing Benefit Arrears

The Council will make deductions from any arrears of Housing Benefit owed to the debtor.

Deductions from Ongoing Housing Benefit

The Council will recover amounts due by making deductions from any ongoing Housing Benefit that the debtor is entitled to

For ongoing Housing Benefit deductions, the legislative rates will be used. The Council is obliged to have due regard to the debtor's circumstances to ensure that undue hardship is not caused.

Debtors are invited to contact the Council to negotiate lower deductions if they are able to demonstrate financial hardship. In these instances, the debtor will be required to provide details of income and expenditure together with supporting documentation. A decision will then be made as to an appropriate rate.

Regulations state that in all cases, a minimum of 50p per week of Housing Benefit must still be paid to the claimant.

Deductions from other benefits due to be paid either by other councils or the DWP

Housing Benefit legislation provides that overpaid Housing Benefit may also be recovered from deductions from some State paid benefits (e.g. Employment and Support Allowance etc.).

Councils are also able to made deductions from Housing Benefit payments to recover overpayments owed to other Councils. However, it should be noted that this is not mandatory and some Councils may refuse to recover overpayments.

Direct Earnings Attachment

This is an Order sent to the liable person's employer instructing them to make deductions direct from the employee's earnings and to forward these payments to the Council. The amount of the deduction is determined by legislation.

Once the Attachment of Earnings Order has been served the employer is able to deduct £1 towards administrative costs for each deduction.

The Attachment of Earnings is a legal document and an employer could be liable for a fine if they fail to comply.

Invoice

The individual will only be issued with an invoice where the Housing Benefit overpayment cannot be recovered by any other prescribed action and will be expected to contact the Council to arrange suitable payment terms if they are unable to settle the invoice in full. Refer to Sundry Debt Policy (Appendix C)

Instalment arrangements

The Council's standard income and expenditure form must be completed to assist in agreeing a suitable repayment plan. Instalment agreements will be subject to a review at least once a year and more often if a debtor's circumstances change. If a debtor fails to keep to any instalment plan agreed with them then we may take action to seek repayment by another method of debt enforcement. We will always seek to maintain contact with a debtor about any repayment problems but if the debtor fails to co-operate or does not respond we may take whatever measures are reasonable to enforce recovery of the debt.

External Collection Agents / enforcement agents

External Collection Agents are used if other methods are either unavailable or unsuccessful or there is a difficulty engaging with the debtor. Benefit claims continue to be reviewed whilst cases are with an external agent as it may be beneficial to recover the overpayment from on-going Housing Benefit if they have reclaimed after the case was referred externally.

Court Action

The Council may pursue the debt via the County Court. Such action must be brought within the six year time limit prescribed by the Limitations Act 1980. Where an order is granted by the court then further enforcement action can be taken. The following options will be considered:-

Third party Debt Order

This can be applied for at the courts. If successful the order allows the Council to take the money owed from whoever holds the money, such as a bank or building society or employer if redundancy payments are due.

Charging Orders

A Charging Order can be applied for at the courts and if successful would be placed on a property to secure the debt. This means that when the property is sold the proceeds would go towards the Council's debt as a priority.

This could be used if the property was intended to be sold.

Alternatively we can request a Force Sale Order which if successful would mean the property would have to be put on the market.

Bankruptcy/Liquidation

This action would be considered if there are sufficient assets to realise and meet the outstanding debt and the debt exceeds that required by legislation. This is one of the final options that the Council would consider.

Where debtors are pursuing personal insolvency, for example bankruptcy or a Debt Relief Order (DRO), those cases will be dealt with following the prevailing case law and regulations. Cases where the debtor has a debt which is the result of "proven fraud" will be excluded from any bankruptcies and DROs.

Recovery from landlords

There are several methods of recovery available relating to landlord overpayments which are shown below. These methods will usually be applied in the following order:-

Deductions from direct payments of Housing Benefit

The overpayment is recovered from the Housing Benefit payments issued on behalf of the tenant directly to the landlord This can be from a single payment or a series of payments

Deductions from Housing Benefit paid to that landlord in respect of other tenants' benefit (landlord recovery only)

Overpayments made to a landlord or agent can be recovered from Housing Benefit paid to a landlord or agent. This includes recovering Housing Benefit payments paid directly to a landlord in respect of other tenants.

Deductions from the landlords own Housing Benefit or prescribed state benefits

This method can only be used when recovery could be made by deductions from any benefits the landlord is entitled to.

Invoicing

The landlord will be issued with an invoice and will be expected to contact the Council to arrange suitable payment terms if they are unable to settle the invoice in full. Refer to Sundry Debt Policy (Appendix C)

Instalment arrangements

The Council's standard income and expenditure form must be completed to assist in agreeing a suitable repayment plan. Instalment agreements will be subject to a review at least once a year and more often if a debtor's circumstances change. If a debtor fails to keep to any instalment plan agreed with them then we may take action to seek repayment by another method of debt enforcement. We will always seek to maintain contact with a debtor about any repayment problems but if the debtor fails to co-operate or does not respond we may take whatever measures are reasonable to enforce recovery of the debt.

External Collection Agents

External Collection Agents are used if other methods are either unavailable or unsuccessful or there is a difficulty engaging with the debtor. Benefit claims continue to be reviewed whilst cases are with an external agent as it may be beneficial to recover the overpayment from on-going Housing Benefit if they have reclaimed after the case was referred externally.

Court Action

The Council may pursue the debt via the County Court. Such action must be brought within the six year time limit prescribed by the Limitations Act 1980. Where an Order is granted by the court then further enforcement action can be taken. The following options will be considered:-

Third party Debt Order

This can be applied for at the courts. If successful the Order allows the Council to take the money owed from whoever holds the money, such as a bank or building society or employer if redundancy payments are due.

Charging Orders

A Charging Order can be applied for at the courts and if successful would be placed on a property to secure the debt. This means that when the property is sold the proceeds would go towards the Council's debt as a priority.

This could be used if the property was intended to be sold.

Alternatively we can request a Force Sale Order which if successful would mean the property would have to be put on the market.

Bankruptcy/Liquidation

This action would be considered if there are sufficient assets to realise and meet the outstanding debt and the debt exceeds that required by legislation. This is one of the final options that the Council would consider.

Where debtors are pursuing personal insolvency, for example bankruptcy or a Debt Relief Order (DRO), those cases will be dealt with following the prevailing case law and regulations. Cases where the debtor has a debt which is the result of "proven fraud" will be excluded from any bankruptcies and DROs.

Sundry Debtors

Sundry Debtor invoices are issued for various types of debt across the Council such as:

Licences, Industrial Units, Trade Waste, Leisure, Housing Benefit overpayments, water sampling, and other ad hoc bills.

Recovery of these debts is either governed by statute or civil debt procedures. Service areas within the Council are responsible for raising the charges / invoices initially. Service areas are also responsible for issuing credit notes where applicable and corresponding with debtors in regards to disputes or queries relating to the validity of the debt.

The Council will always raise invoices for all values. Recovery action on any outstanding debts will be balanced against the value of the debt and the administrative costs involved (except where there is a statutory requirement to do so) as it would not be cost effective to pursue low debts through the Court.

The Council will rigorously pursue debtors, and will avoid entering into contracts with persons or organisations that are likely to become bad debtors. Where it is known that an individual, company or organisation has a poor payment history the Council should not engage in any form of business with those prospective debtors.

Where an invoice is raised, the Council's standard terms for payment apply, unless otherwise stated.

If an invoice is not paid within 28 days of issue, a reminder notice is sent.

If payment is not made within 14 days of the reminder notice a Final Notice is issued informing the debtor the matter is being passed to the Council's Recovery Section.

The Recovery Section will issue a 'Warning of Court Action' letter one month after the Final Notice.

Where a debtor fails to respond to the 'Warning of Court Action' the Council will contact debtors for repayment of the invoice. Where repayment is not made in full there are several different methods of recovery available to the Council. In deciding the most appropriate method it is important to establish what information is available about the debtor. All statutory methods of enforcement will be available for use including:

Instalment arrangements

The Council's standard income and expenditure form must be completed to assist in agreeing a suitable repayment plan. Instalment agreements will be subject to a review at least once a year and more often if a debtor's circumstances change. If a debtor fails to keep to any instalment plan agreed with them then we may take action to seek repayment by another method of debt enforcement. We will always seek to maintain contact with a debtor about any repayment problems but if the debtor fails to co-operate or does not respond we may take whatever measures are reasonable to enforce recovery of the debt.

External Collection Agents / enforcement agents

External Collection Agents are used if other methods are either unavailable or unsuccessful or there is a difficulty engaging with the debtor. Cases should be reviewed whilst cases are with an external agent as the Council may obtain updated information which would identify a more effective method of recovery.

County Court Action

Councils are able to use a “fast tracking” procedure to obtain Judgment (CCJ).

The County Court is involved in enforcing (collecting) overpayments and if it grants an order it can be enforced as if it were a County Court judgment. A copy of the Order will be sent to the Council and the debtor.

Although there is no right of appeal to the Court against the overpayment, an application for the setting aside of an Order (CCJ) can be made. For example, if the Benefit notification is defective or appeal rights are ignored by the Council.

The costs incurred in obtaining a Court Order will be recharged to the debtor.

Further Legal Action

Once Judgment has been obtained and no payments are made further legal action then becomes available. The action chosen will depend upon the debtor’s willingness to repay and after taking account of their individual circumstances. Options for further action include: -

Order to obtain information

This Order will provide the Council with financial details of the debtor to help determine what enforcement action to take. The debtor will be questioned under oath or affirmation. The debtor may be sent prison for disobeying the Court Order.

Attachment of Earnings Order

This is an order sent to the liable person’s employer instructing them to make deductions direct from the employee’s earnings and to forward these payments to the Council. The amount of the deduction is determined by legislation.

Once the Attachment of Earnings Order has been served the employer is able to deduct £1 towards administrative costs for each deduction.

The Attachment of Earnings is a legal document and an employer could be liable for a fine if they fail to comply.

Third party Debt Order

This can be applied for at the Courts. If successful the Order allows the Council to take the money owed from whoever holds the money, such as a bank or building society or employer if redundancy payments are due.

Charging Orders

A Charging Order can be applied for at the Courts and if successful would be placed on a property to secure the debt. This means that when the property is sold the proceeds would go towards the Council’s debt as a priority.

This could be used if the property was intended to be sold.

Alternatively we can request a Force Sale Order which if successful would mean the property would have to be put on the market.

Bankruptcy/ Liquidation

This action would be considered if there are sufficient assets to realise and meet the outstanding debt and the debt exceeds that required by legislation. This is one of the final options that the Council would consider.

Where debtors are pursuing personal insolvency, for example bankruptcy or a Debt Relief Order (DRO), those cases will be dealt with following the prevailing case law and regulations.

Contact details for advice and support:

Some people or businesses may require the assistance of one of the following:

The Citizens Advice Bureau - for personal debt and housing advice

Tel 03444 111 444

www.citizensadvice.org.uk

Step-Change Debt Charity (Formerly: Consumer Credit Counselling Service)

Tel 0800 138 1111

www.stepchange.org

Age UK for independent advice on benefits / financial concerns

Tel 0800 169 2081

www.ageuk.org.uk

Money Advice Service

Tel 0300 500 5000

www.moneyadviceservice.org.uk

The National Debt Line

Tel 0808 808 4000

www.nationaldebtline.co.uk

Free, confidential help and advice for Businesses can be found at:

Business Debt Line

Tel 0800 197 6026

www.businessdebtline.org

Customers are advised to use care and check for fees and charges when selecting any of these services.