



# Corporate Debt Recovery Framework

## VERSION CONTROL

Version	Version Date	Author	Description
1	October 2012	David Barnes	Introduction of policy framework
2	May 2019	David Barnes	<p>Revised policy framework (to take effect from April 2019) associated with changes to:</p> <ol style="list-style-type: none"><li>1. Bailiff Regulations and Fees</li><li>2. Removal of committal as a sanction for the non-payment of Council Tax.</li><li>3. Revised internal working practices for the collection of sundry debt involving the development of a more robust escalation process for disputed invoices.</li><li>4. Minimum monetary threshold when taking Bankruptcy action</li><li>5. Revised working practices for the recovery of unpaid housing rent</li></ol>

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## **1.0 Introduction**

- 1.1 This document details the Councils policies on the billing, collection and recovery of monies due to the Council.
- 1.2 It is essential that all monies due are collected effectively by the Council and that debts owed are kept to a minimum. This is because the Council has both a legal duty and a responsibility to its citizens to ensure that income due is paid promptly.
- 1.3 The Policy framework also recognises that collection of debt should be fair to everyone, especially those on limited incomes who struggle to pay or those who have not paid because of an oversight. It is also recognised that some people deliberately avoid their payment obligations by delaying their payments or choosing not to make payment and proportionate measures will be deployed to develop a culture of payment while encouraging those in need of help to get in touch with the Council at an early stage.
- 1.4 Where a person or organisation makes contact to discuss payment difficulties their circumstances will be considered fairly and objectively with a view to agreeing a reasonable payment arrangement, minimising recovery action and avoiding potential additional costs. Where people or organisations fail to make contact or maintain their payment obligations, recovery action will continue in the wider public interest.
- 1.5 This Policy framework also sets out the general principles to be applied in relation to management of debt across all services provided by the Council. The Council collects income from many streams; some of this activity is governed by legislation and statutory rules while others by sound principles of financial management and good practice.
- 1.6 Underpinning this policy are effective income management processes critical to the delivery of overall Council objectives, as every pound of income that is not collected or takes extra effort to collect, ultimately leads to additional financial pressures on the Councils budget.

## **2.0 Scope of the Policy Framework**

2.1 This policy framework applies to the collection of :

- Council Tax and Business Rates (Appendix 1)
- Housing Benefit overpayment and Council Tax Reduction (Appendix 2)
- Sundry Debt (Appendix 3)
- Housing Rents (Appendices 4 and 5)

2.2 There are specific rules and regulations which govern the recovery and collection of these debt types – these are set out in the respective appendices.

## **3.0 Guiding Principles of the Policy Framework**

3.1 The Council will ensure:

- Any recovery action taken will be proportionate

Proportionality allows for a balance to be struck between the potential loss of income due to the Council and the costs of compliance.

- The approach taken will be consistent

Consistency means taking a similar approach in similar circumstances to achieve similar objectives. The Council aims to achieve this in the advice given, the use of its powers and the recovery procedures used. At the same time, the Council recognises the need to treat everyone as individuals and therefore will aim to take account of many variables such as the social circumstances of the individual, the payment history and their ability to pay.

- The actions taken will be transparent

Transparency is important in maintaining public confidence in the Council. It means that helping people to understand what is expected of them, to meet their payment obligations and what they should expect from the Council. It also means explaining clearly the reasons for taking any recovery action and the next steps that the Council may take if payment is not made.

3.2 The Council will also work with the voluntary sector and advice agencies, where we collectively:

- Acknowledge that there is a distinction between can't and won't pay

The policy framework will ensure fairness in that every debtor has an obligation to repay their debt owed so that future services do not suffer. Those who pay promptly should not subsidise those who are not prepared to pay what they owe.

- Recognise that advice and early intervention is a key element from the perspective of all partners.

The policy framework will ensure that the Council and its partner organisations will treat all debtors fairly and, where possible they will promote free debt advice services. Where appropriate, payment agreements will be put in place to assist debtors in adverse financial circumstances. The decision to agree a repayment timetable will be influenced by the willingness of the debtor to take advantage of the debt advice at an early stage.

- Acknowledge that financial capability and vulnerability are sometimes underlying issues around non payment.

The policy framework will seek to promote financial inclusion and early intervention by recognising that debtors may have underlying problems with money management or may not be receiving all the financial assistance to which they are entitled.

## **4.0 Policy Framework Aims and Objectives**

### **4.1 The key aims are to :**

- Ensure the Council provides bills promptly and remind people quickly if they do not pay.
- Offer efficient and flexible payment methods
- Encourage people to make early contact to avoid the build up of debt
- Inform people of their entitlement to benefits, discounts and exemptions to ensure maximum take-up and that net bills/liabilities are issued
- Inform people of the general availability of income related benefits such as Universal Credit, Pension Credits, Housing and Council Tax Reduction
- Take positive action to prevent arrears from occurring in the first place, maximising income and entitlement at an early stage
- Take recovery action against deliberate non-payers or those who delay payment without genuine reason while always working to identify and assist those who genuinely can't pay or are finding it difficult to pay
- Where people have fallen or are likely to fall into arrears, a commitment to work with them and their representatives to set reasonable and realistic payment levels that they can maintain, ensuring that payment arrangements reflect the ability to pay as well as the level of debt owed
- Work in a co-ordinated approach with multiple debts owed to the Council. Priority will be given to debts where non payment could lead directly to the loss of a person's home in the case of non-payment of housing rent. Other debts owed to the Council may, depending on the circumstances, be treated to as a lower priority until payment of the priority debt owed to the Council is made
- Work in partnership with recognised advice agencies to advise people who need help and guidance to repay debts where they can get independent advice from to assist with wider financial problems

## **APPENDIX 1 - Council Tax and Business Rates Recovery Policy**

### **1.0 Introduction**

- 1.1 This document explains the Revenues Service approach to administering the billing, collection and recovery of Council Tax as laid down by the Local Government Finance Act 1992 and Local Government Finance Act 1988 and all other supporting legislation. The document details information about the billing and recovery processes. The intention is to explain the processes clearly to show the transparent nature of the work, rather than give a detailed analysis of the legislation involved.

### **2.0 The Billing Process**

- 2.1 The Council recognises that providing a correct bill in an efficient way maximises the likelihood of helping customers pay on time, and it strives to issue accurate bills to customers as promptly as possible, and to offer helpful advice face-to-face, in writing, by e-mail, over the phone and through advice on the website.
- 2.2 All available discounts, exemptions, valuation band changes, and Council Tax reduction will be granted in appropriate cases at the earliest possible time to ensure the amount owed is correct. Customers will be given the maximum number of instalments that are available so that payment can be spread over the longest period within the year.
- 2.3 Discounts, exemptions and reliefs will be reviewed periodically engaging external contractors and utilising third party data where appropriate and lawful, however it remains a customer responsibility to inform the Council within 21 days of any changes in their circumstances that may affect their entitlement to any reduction in their charges.
- 2.4 Clear information regarding reductions, reliefs, including benefit, is widely available through leaflets that are provided with annual bills and through the website. Officers are trained to advise customers about the range of benefits, discounts and exemptions available and how to make claims.
- 2.5 Where there is a joint occupation or ownership, for example joint tenants or owners, or partnerships like husband and wife, both are expected to pay the charge. All bills and other correspondence will be addressed to all the liable persons for the charge. The law says that each person will be liable both for their own share of the charge and for the whole charge (called "jointly and severally liable"), so if necessary action for recovery of the debt will be taken against any or all of the liable persons.
- 2.6 If a taxpayer disputes the basis of why or what they have been charged in relation to Council Tax, the Council will advise them of their appeal rights by initially writing to the Council or alternatively by seeking redress at the Valuation Tribunal for Wales.

2.7 Council Tax and Business Rates is charged for financial years beginning on 1st April and ending on 31st March the following year. Taxpayers who receive an annual bill during March will normally receive ten monthly instalments payable between April and January inclusive, but the Council also welcome taxpayers to pay over 12 months. As the financial year progresses, less months are available, so the number of instalments reduces. Between 1st May and 31st December the number of instalments allowed for the year's charge is the number of whole months less one. New bills created from January will usually be given one instalment payable within 14 days from the date of the bill.

### **3.0 The Recovery Process**

3.1 The Council only has to prove recovery documents are issued in time and in line with regulations; it is not necessary to prove customers have received them.

3.2 As Council Tax and Business Rates are statutory charges it is very important that taxpayers give it a high priority when looking at their finances. If monthly instalments are paid late, or not at all, the Council will take action to recover the overdue amounts by sending documents that explain the consequences of delaying or not making payment. Taxpayers are actively encouraged to contact the Council without delay if they experience difficulties in paying their bill.

3.3 The Council has a planned annual recovery and enforcement timetable that sets out the dates for the issue of all recovery documents like reminders, final notices and summonses. It also details magistrates' court hearing dates and targets for transmitting accounts for further recovery action through the use of Enforcement Agents. The enforcement taken will be:

#### **Reminders and Final Notice Stage:**

3.4 Apart from any accounts issued near the end of a financial year, all bills include a monthly instalment scheme. It is a taxpayer's responsibility to make sure that instalments are paid on time. If taxpayers do not pay, or if they make occasional or irregular payments that are not received on or by the due date, they will be considered overdue. If this happens, recovery action will be taken, initially in the form of a **1<sup>st</sup> Reminder Notice**.

3.5 Legislation allows for reminders to be sent immediately after an instalment is due but the Council will usually allow taxpayers 12 days after a payment has become overdue before issuing a 1<sup>st</sup> reminder.

3.6 If an overdue instalment is subject to a 1<sup>st</sup> Reminder Notice, a taxpayer is required to make payment in full of the overdue instalment within 7 days. If payment is made as required, future instalments can then be paid as shown on the bill.

3.7 If the overdue instalment is paid, but a future instalment is not paid on time a **2<sup>nd</sup> Reminder Notice** will be issued. If payment is made as required, future instalments can then be paid as shown on the bill. The second reminder states clearly that no further reminder notices will be sent if future instalments are not paid on time.



- 3.8 If payment is not made within 7 days following the issue of a of a 1<sup>st</sup> or 2<sup>nd</sup> reminder notice, after a further seven days a **Final Notice** will be sent for the full amount outstanding for the year.
- 3.9 Additionally, a Final Notice will also be issued if part or all of an instalment is overdue for a third time. This requires the full annual charge that is outstanding, rather than just the overdue instalment, to be paid in full within seven days. If payment is not made as required a **summons** will be sent for the full amount outstanding for the year together with associated costs of £50 for the issue of the summons.
- 3.10 Dependent on how promptly taxpayers pay, no more than two reminders and one final notice will be issued in a financial year before a summons is issued. Where the right to pay by instalments is lost due to consistent late payment, or no payment, this will only be forfeited for the current financial year; the right to pay by instalments will be reinstated when subsequent years' charges become due
- 3.11 Reminder and Final Notices confirm the full range of payment methods available and include information to encourage taxpayers to get in touch with the Council to discuss payment difficulties. The Council will, where appropriate, re-instate a taxpayer's instalment scheme where the taxpayer has agreed to bring the account up to date and switch to payment by direct debit for payment of future payments.
- 3.12 The Council will normally only offer to re-instate instalments once in any financial year following the issue of a final reminder. The Council recognises the offer to re-instate instalment may help a taxpayers meet financial obligations, but at the same time, the taxpayers previous payment history will be considered to ensure habitual late payers are not continually given the opportunity to delay payment.

#### **Summons Stage:**

- 3.13 In the event of late or non-payment as explained above, the Council will issue a **Summons** at the Magistrates' Court, giving at least fourteen days notice of the hearing date. The summons will confirm the charge outstanding together with court costs that are added to the amount payable in recognition of the extra work needed to secure payment. The additional costs charged for a summons are currently £50.
- 3.14 The summons will confirm the date and time of the Magistrates Court hearing at which the Council's officer will need to satisfy the Magistrate that the customer is the liable person, does owe the amount outstanding, and that the Council has sent the correct documents to the customers' current or last known address.
- 3.15 Taxpayers who pay the full amount confirmed on the summons, including the additional £50 costs before the hearing date do not have to attend court, however any payment arrangement made following the issue of a summons which extends payment beyond the liability order court hearing date will be made on the basis that the application for a liability order will continue and will include the initial £50 court costs and additional costs of £20 for the issue of a Liability Order (i.e. a total of £70 costs).

- 3.16 Attendance at the Magistrates Court is not compulsory, and usually the majority of customers summonsed do not attend. A taxpayer can dispute the charge or speak to the Court. The Court will give an audience to anyone who wishes to appear, however, unless the taxpayer has a valid defence then the Court is obliged to grant a Liability Order.

### **Liability Order stage**

- 3.17 Following the issue of a Liability Order, the Council will write to the taxpayer in an effort to secure full payment or to make a suitable payment agreement. The notification will also provide details of potential consequences of enforcement action (and additional enforcement (Bailiff) costs) if the taxpayer does not make payment or fails to make a payment agreement. For Council Tax matters, the Council will also request to a taxpayer complete a 'statutory request for information', with details of their employment details, and if appropriate, information about any benefit that is received. Taxpayers are required to complete and return the statutory request within 14 days.
- 3.18 The Council will enter into a payment agreement with a taxpayer using the first principle that the outstanding balance must be paid in full prior to the end of the financial year, although in cases where there is no ongoing liability, payment agreements may be extended beyond the end of the financial year, depending on the circumstances of the case.
- 3.19 Following the issue of a Liability and in the event of the taxpayer not returning the 'statutory request for information' or failing to make a payment agreement, the recovery action to be taken will be dependent on the circumstances of each individual case and with due regard to the most effective way for the Council to collect :

**Attachment of Earnings** – Attachments require an employer of the taxpayer (for Council Tax only) to deduct a set percentage of the earnings and send them directly to the Council to pay the outstanding Liability Order. The amount of money deducted depends on how much is earned and whether the person is paid weekly or monthly. The deductions are governed by Council Tax regulations.

**Attachment from Income Support, Job Seekers Allowance, Universal Credit and Employment Support Allowance** – Attachments require the Department of Work and Pensions to make deductions from the taxpayers benefit. The level of deduction is fixed by the Government but does increase annually.

**Attachment of Members Allowances** – The Council may make an attachment of the allowances of an elected member.

**Taking Control of Goods & Use of Enforcement Agents** – Enforcement Agents contracted by the Council may be used where no attachment is possible or suitable. The Enforcement Agents will be required to comply with the Taking Control of Goods Regulations 2014 at all times.

Initially, if a debt has been passed to an enforcement agent a fixed fee of £75 for each liability order will be incurred. This is known as the compliance stage and taxpayers are encouraged to make early contact with the Enforcement Team within 10 days in order to pay the amounts due in full or set up a realistic repayment plan.

If taxpayers fail to engage or set up a repayment plan at the compliance stage, the liability order(s) will be passed to the Enforcement Agent for a visit to be undertaken. If the Enforcement Agent is required to visit there is a fixed fee of £235 plus 7.5% for any balance due above £1,500.

The enforcement agent will normally ask taxpayers for payment in full, however the enforcement agent will normally also enter into a Controlled Goods Agreement which also provides taxpayers with an opportunity to pay.

If possessions are subject to a Controlled Goods Agreement these goods cannot be disposed or sold without the enforcement agents consent.

If taxpayers refuse to sign a Controlled Goods Agreement the enforcement agent can take goods to the value of the debt whilst at the property. There are additional costs of £110 plus 7.5% for any balance due above £1,500 if goods have to be removed and sold.

If the enforcement agent decides the value of the goods is insufficient to pay the amount outstanding and there is no prospective of making payment agreement, or the taxpayer cannot be traced the enforcement agent will normally return the Liability Order to the Council which ends the enforcement agent action.

- 3.20 If enforcement agent action proves unsuccessful, the Council will then consider whether to take further recovery action, dependent on the specific personal and financial circumstances of each individual case and with due regard to the most effective way for the Council to collect :

**Charging Order** – For taxpayers owing £1,000 or more, the Council may apply to the County Court for an Order that places a charge on the taxpayer’s property and the court, in certain circumstances, empowering the sale of the property is the taxpayer does not pay. The obtaining of a charging order does not prompt automatic payment of the amount outstanding; providing there is sufficient equity in the property value following the repayment of any outstanding mortgage or other existing registered charges, it secures payment of the debt when the property is sold. Before such action is taken, the Council will always send a final letter inviting the taxpayer to a pre-arranged meeting in an effort to make a payment agreement.

**Bankruptcy** – For taxpayers owing £5,000 or more, the Council may also consider taking bankruptcy action. Before such action is taken, the Council will always send a final letter inviting the taxpayer to a pre-arranged meeting in an effort to make a payment agreement. Bankruptcy will be considered, only as a last resort, in line with the policy in Appendix 6.

#### **4.0 Write Offs**

- 4.1 The Council recognises that where a debt is deemed to be irrecoverable, especially after all recovery options have been considered and/or taken, prompt write off of such debts is appropriate and good practice in certain circumstances and in line with the policy in Appendix 7.

## **APPENDIX 2 - Housing Benefit Overpayment and Council Tax Reduction Policy**

### **1.0 Introduction**

- 1.1 Overpayments of Housing Benefit and Council Tax Reduction are established through a change in benefit entitlement. They are described as an amount of benefit that has been awarded but to which there is no entitlement under the regulations.
- 1.2 Accurate and prompt identification of overpayments is important to ensure that the incorrect payment of benefit is discontinued and to maximise the chances of successful recovery.
- 1.3 The Council recognises that to ensure there is minimal loss to public funds firm but fair action must be undertaken in the administration of Housing Benefit overpayments and Council Tax Reduction.
- 1.4 The policy will reflect best practice in the procedure for dealing with the administration and recovery of Housing Benefit overpayments and Council Tax Reduction.
- 1.5 The policy will be applied in all cases where an overpayment of benefit has occurred, that is, any amount of Housing Benefit or Council Tax Reduction which has been paid but to which there was no entitlement whether on initial decision or on a subsequent revised or superseded decision.
- 1.6 In undertaking this policy framework, the Council will :
  - Take steps to minimise and prevent overpayments from occurring
  - Identify the overpayment promptly
  - Stop the overpayment from continuing
  - Classify the overpayment correctly
  - Determine if the overpayment is recoverable and if recoverable
    - determine from whom to recover
    - determine the most appropriate method of recovery
    - Notify the claimant and other affected persons of the decision
- 1.7 In most cases overpayments can arise as a consequence of:
  - Late disclosure of a change in circumstances
  - Errors made by the claimant when completing an application form or review form
  - Claimant error
  - Official errors made by the Council or the Department for Work and Pensions
  - Deliberate fraud

- 1.8 Official error overpayments are only recoverable if the claimant or the person from whom recovery of the overpayment is sought could reasonably have known that an overpayment was occurring at the time the overpayment occurred.

## **2.0 Prevention of Overpayments**

- 2.1 Overpayments are often difficult and time consuming to administer. They can cause difficulties for claimants and their families as they try to manage on limited incomes. They are to be avoided where possible. This will be achieved by:

- Telling claimants how to avoid overpayments, with letters, in leaflets and during verbal communications
- Encouraging claimants to maintain contact with us
- Processing information quickly and accurately to minimise overpayments
- Offsetting any new or underlying entitlement

## **3.0 Identifying Overpayments**

- 3.1 The Council will aim to act on any information received in relation to a claimants change in circumstances within seven days of having received sufficient information to identify that an overpayment has or will be occurring.

- 3.2 This action will in the first instance include the suspension of further ongoing payments of incorrect benefit.

- 3.3 The Council will endeavour to identify any change in circumstances that would result in an overpayment still outstanding after seven days by:

- Undertaking a check of the Department for Work and Pensions records held on the Customer Information System (CIS) to identify whether entitlement to Income Support, Jobseekers Allowance (Income Based) has ceased and if this information is not readily available on CIS by the sending of a benefits enquiry information letter
- Undertaking a check of the Her Majesty's Revenue and Customs (HMRC) records held on the Verify Earnings and Pensions (VEP) system to confirm current earnings and/or pensions and if this information is not readily available on VEP by the sending of a benefits enquiry information letter.
- Referring potential fraudulent overpayments to the Department for Work and Pensions (DWP) Fraud team
- Ensuring that any post relating to the change in circumstances is prioritised and acted upon

## **4.0 Classification of Overpayments**

- 4.1 The correct classification of overpayments is essential as, depending on the type of overpayment, the authority will receive a percentage of the overpayment back from the government by way of subsidy. A summary of the types of overpayments and percentage of subsidy allowed is shown at the end of this policy.

- 4.2 All overpayments must be correctly classified by an Officer of the Council who has had training to a sufficient standard to allow them to make decisions, which ensure the correct application of the law in the decision making process.

## **5.0 Calculation of Overpayments**

- 5.1 Where an overpayment has occurred the Council must invite claimants to provide sufficient information for any underlying entitlement to benefit for the overpayment period to be assessed.
- 5.2 The full amount of the overpayment should be recovered unless the health or financial circumstances of the person from whom recovery is being sought suggest a lesser amount would be appropriate.
- 5.3 In all cases the overpayment should be recovered as quickly as possible.

## **6.0 Notification Letters**

- 6.1 All notification letters must be dated and issued to all affected persons within fourteen days of the Council having made the decision.
- 6.2 The notification must include the reasons for the decision, the right to request a further statement and the time limit for doing so and the claimants appeal rights and the time limit for doing so.
- 6.3 Copies of the notification letter must be able to be reproduced in the event of an appeal, complaint or proceedings taken against the Council.

## **7.0 Decisions on Recoverability**

- 7.1 In all cases where an overpayment has arisen the Council should consider whether an official error has caused or contributed towards the overpayment.
- 7.2 Where the Council has identified an overpayment, which was caused or contributed to by an official error, it should decide whether recovery of the overpayment is appropriate under the guidance issued by the Department for Work and Pensions.
- 7.3 Before recovery action begins consideration will be given as to whom is the most appropriate person to recover the overpayment from. This may in certain cases mean that further information is required from the affected parties.
- 7.4 Recovery should then be made from the most appropriate persons who may be:
  - The claimant
  - The person to whom the payment of benefit was made
  - The person who misrepresented or failed to disclose the material fact
  - The partner of the claimant if the partner was living with the claimant at the time of the overpayment and at the time the decision to recover was made
- 7.5 In all cases where the overpayment was the result of proven fraud the overpayment should, in the first instance, be sought to be recovered from the person who misrepresented or failed to disclose a material fact

## **8.0 Methods of Recovery**

- 8.1 Overpayments of recoverable Council Tax Reduction will result in an adjustment being made to the claimants council tax account for the appropriate year. An amended bill will be issued and any unpaid monies will be subject to recovery action under the council tax regulations.
- 8.2 The most appropriate method of recovery for Housing Benefit Overpayments should be considered in all cases, including:
- On-going deductions from further payments of Housing Benefit
  - Deductions from other Department for Works and Pensions benefits
  - Direct Earnings Attachments (DEA) Benefit sundry debtor invoices
  - Debits to the rent account where it is in credit
  - Recovery from landlord in appropriate cases
  - Referral to the Councils contracted debt collection agency (after all the above avenues of recovery are exhausted)
  - Applying to the County Court for a County Court Judgement (after all avenues of recovery are considered or exhausted).
- 8.3 A period of at least one calendar month should have elapsed before recovery action begins. This will allow for the claimant to re-apply for benefit, which may identify an underlying entitlement or for the claimant to register any appeal.
- 8.4 In cases where recovery from on-going benefit is sought the standard maximum rate of deduction as laid down by regulation should be applied unless the health or financial circumstances of the claimant suggest a more appropriate rate should be used. In all cases however a minimum amount of fifty pence per week Housing Benefit must remain in payment.

## **9.0 Write Offs**

- 9.1 The Council recognises that where a debt is deemed to be irrecoverable, especially after all recovery options have been considered and/or, prompt write off of such debts is appropriate and good practice in certain circumstances and in line with the policy in Appendix 7

## **APPENDIX 3 - Sundry Debt Policy Framework**

### **1.0 Introduction**

- 1.1 The Council charges and collects income from a diverse range of activities, customers and range of public bodies and private businesses. Sundry debt does not include Council Tax, Business Rates, Housing Rent or Housing Benefit Overpayments.
- 1.2 The value of invoices raised can range significantly from a few pounds to several hundred thousand of pounds and therefore, taken together, the value of all of these sundry debts is considerable.
- 1.3 It is essential that the Council recovers all collectable debt owed to it and the purpose of this policy aims to:
  - Maximise the collection of the Councils income
  - Ensure that, where possible, payment up front is received ensuring whenever possible that collection of the fee or charge involved takes place prior to the service being provided so that credit is only given when essential to do so
  - Ensure clear terms and conditions of payment appear within documentation
  - Ensure invoicing and recovery procedures are carried out on an accurate and timely basis, encouraging debtors to pay promptly and making collection and recovery activity more efficient by prioritising collection of larger debts
  - Minimise the time taken to raise invoices to within 10 days of the provision of service(s)
  - Minimise the time taken to collect charges or to effect recovery
  - Minimise the time taken to resolve invoice disputes
  - End the ongoing delivery of a non statutory service to a customer in non payment cases, but only where it is possible to do so.
  - Minimise the level of debt owed to the Council and its provision for bad debts
  - Minimise the incidence of debt that cannot be collected
  - Raise corporate awareness and responsibility of the importance of prompt debt recovery across all services
- 1.4 The charge must, depending on legislation, always cover the cost of providing goods or service and the costs of collection, unless the Council has taken a policy decision to subsidise the service.
- 1.5 The charge must be invoiced in an efficient and cost effective way, ensuring that the frequency of invoices are minimised for services that are delivery on a regular and planned basis.
- 1.6 The debt will remain the responsibility of the Service in which it was raised, and recovery action will be taken by the Corporate Debt Team. It is the responsibility of the services to assist the Corporate Debt Team in collecting debts, ensuring that information and assistance is provides to ensure debts are collected quickly.



## **2.0 Corporate Responsibilities**

2.1 All officers involved in the issuing and recovery of sundry debt invoices must ensure that:

- The Corporate Debt Recovery Policy is adhered to (specifically Appendix 3 – Sundry Debts)
- The aims of the policy are adhered to
- The parts of this policy that apply to their Service areas are correctly followed
- Specific attention is paid to prohibit the practise of not resolving invoice disputes within a reasonable period
- Budget Managers are fully aware of their responsibilities
- Relevant systems and procedures are in place
- Officers involved in the debt collection process are appropriately trained and are aware of their corporate responsibility

2.2 The Corporate Finance Manager, Revenues Manager with Internal Audit support will provide assurance that this Policy is adhered to and is effective.

## **3.0 Raising an Invoice**

3.1 A commercial approach should be adopted where fees and charges are obtained in advance or at the time of service provision. Where goods or services provided need to be paid for after this, then the Council offers credit facilities wherever it is considered prudent to do so.

3.2 Prompt invoicing is essential to efficient debt collection; the longer the period, the less likely is prompt settlement. Invoices must therefore be raised within 10 days of the service being delivered or due.

3.3 By raising an invoice, the originating service agrees approval to take appropriate recovery action through the Corporate Debt Recovery Team, including court action when necessary, is granted at the time the debt is raised.

3.4 Invoices must not be raised for amounts of less than £40, excluding VAT, unless the invoice relates to collection of peppercorn rents, licenses or leases in connection with occupation of Council land and property. This is in line with the Council's Financial Procedure Rules.

3.5 For payment of amounts of £40 or less services are required to request payment up front where it is reasonable and practical to do so.

3.6 The service responsible for raising the invoice must ensure that the evidence of the service provided is fully validated and that the invoice is accurate and contains sufficient detail for both billing and recovery purposes. Services must ensure that all invoice information is fully completed, including:

- Customer's full name(s)
- Customer's full address(es), including postcode(s)
- Customer's contact telephone number(s)

- Customer's e-mail address
  - Name of contact officer in cases of query over the service provided
  - Date of supply of service
  - Purchase order number (where applicable)
  - Full description of the service/goods supplied
  - For each type of supply – the unit price or rate, quantity or extent of goods and services
  - Amount due
  - VAT amount and rate of VAT charged
  - Total due
  - For each type of supply – the unit price or rate, quantity or extent of goods and services, VAT amount and rate of VAT charged
- 3.7 The content (narrative) on the invoice should be concise but of sufficient clarity to ensure that the customer fully understands the bill.
- 3.8 All invoices must be raised to a correctly named legal entity. In the event of non-payment, legal action cannot be taken against a non-legal entity. Legal entities are:
- **Individuals** - This is usually someone living at a residential address. When a request is received for a service, the person's full name (title, forename(s) and surname) must be obtained and stated. Initials are not sufficient. If the request is on behalf of more than one person then the full name of each person must be obtained and stated. The full correct postal address, including postcode, must be stated.
  - **Sole Traders** - Where an individual is trading in his or her own name the full name of the individual as well as the business name must be obtained e.g. Mr John Smith, trading as Fast Removals. Evidence of the name of the business could be in the form of a request for services on a business letterhead. The individual's full postal address must also be requested.
  - **Partnerships**- "LLP" must be added where applicable, otherwise the full names of one, two or more partners must be stated, followed by "trading as"(as above). If LLP is applicable the full correct business address, including postcode, must be stated, otherwise the full correct postal address(es), including postcode of the partner(s) should be stated.
  - **Limited companies** - the name must include "Ltd" or "Plc". Invoices can be addressed to either the current registered office or to a place of business of the company. Evidence of their Limited Company Status and registered office must be obtained by requiring confirmation of the service request on their official letterhead
  - **Charities limited by guarantee** - Companies which are charitable and also limited by guarantee can be exempted from using the term "Ltd" so, for example: "Oxfam" is a correct name. Evidence of their charitable status must be obtained by requiring confirmation of the service request on their official letterhead.
  - **Clubs run by a committee** - the full name(s) and address(es) of the treasurer and / or the secretary, or the trustees must be stated.
  - **Trustees** – the full name(s) and address(es) of the trustee(s) and the full name of the trust must be stated.
  - **Executors or Personal Representatives** – must be addressed e.g. "Mr Peter Smith!, Executor of James Brown Deceased or "Personal

representatives of James Brown Deceased". The full postal address(es) of the executors/personal representatives must be stated.

3.9 An invoice should not be raised where:

- A purchase order or written agreement has not been received
- It cannot be proven that the goods and/or services have been supplied
- If the debt is already bad or doubtful

#### **4.0 Payment Terms**

4.1 The Council will collect monies owing to it fully and promptly in line with the 30 day standard terms as outlined on the invoice. The standard terms apply to all sundry debtor accounts raised by the Council and should not be deviated from unless with the prior approval of the Corporate Finance Manager.

4.2 All requests from customers to enter into payment agreements must be referred to the Corporate Debt team regardless of the amount owed. The Corporate Debt team will set up and monitor all payment agreements.

4.3 Payment terms beyond the 30 day period will only be granted where a customer is not able to settle the debt in full in one payment.

4.4 The Corporate Debt team will withdraw payment terms if a debtor fails to maintain a payment agreement.

#### **5.0 Accounting Arrangements**

5.1 Services will receive the credit when an invoice is first raised.

5.2 Where debts cannot be recovered and the debt is written off, the original debt will be debited from directorate bad debt provision by way of a write off. All write offs will be considered in accordance with the Financial Procedure Rules and in accordance with the policy guidance in Appendix 7 to this policy.

5.3 All relevant information relating to an invoice (otherwise known as a proof of debt) should be kept until at least six years after it is first issued. If at the end of that six year period the bill still remains unpaid but payments are being made, the supporting documentation should be retained until final settlement or write off of the debt.

5.4 Appropriate accounting arrangements will be put in place to ensure that the Council reclaims VAT from HMRC on a bad debt if:

- Goods/Services have been supplied and VAT has been accounted for and paid to HMRC (as output tax), but no payment (or only a part payment has been received), and
- The amount has, or is, about to be written off in the accounts, and
- Six months have elapsed from the later of the supply date and the time when payment was due, and
- The reclaim of VAT is made within three years and six months of the date the payment was due and payable or the date of supply.

5.5 Refunds for overpayments must be submitted by the Accounts Receivable Control Team to process and reconcile the refund request to control account and journals relating to the ledger code. Refunds will only be processed where there are no other debts outstanding and due from that customer.

5.6 All credit values of £1 or under will be transferred to the Councils Central Fund after the expiry of one financial year plus the current financial year. The same process will also be followed for any credit balances where the Corporate Debt/Accounts Receivable Control Team is unable to trace the debtor.

## **6.0 Dispute Resolutions**

6.1 Where a customer disputes an invoice with the service, the service must notify the Corporate Debt team immediately to prevent the recovery process continuing. Equally, where a customer contacts the debt team rather than the service to dispute the invoice, the matter will be referred to the service responsible for raising the invoice and recovery will be held. Full notes and reasons for the dispute must be added to the customer's account.

6.2 To ensure the efficiency of debt collection and good customer service, all disputes must be resolved by the service responsible for raising the invoice within 20 working days of the dispute being raised. The Corporate Debt team must be notified of the outcome of the dispute.

6.3 A dispute is not resolved unless it meets one of the following conditions:

- Customer is correct and gets a full credit
- Customer is partly correct, gets a partial credit and accepts revisions
- Customer is not correct and accepts the charge
- Customer is not correct but does not accept the decision of the service and the service is prepared to support the commencement or continuation of recovery proceedings.

6.4 Where disputes are not resolved within 20 working days of the dispute being raised, outstanding disputes will be escalated to the senior service manager within the service area initiating the invoice.

6.5 Following a case referral to a senior service manager, if the service does not resolve the dispute or provide a viable reason within a further 5 working days as to why the dispute cannot be resolved, the disputed debt will be escalated to the relevant chief officer for review and resolution.

6.6 For **all** unresolved disputes exceeding 35 working days, the Corporate Debt team will raise a credit note to remove the debt from the system and reverse the income from the service. The service responsible for raising the invoice will be notified when this happens. It will then be the responsibility of the service for the re-raising of the invoice once the dispute is resolved, if appropriate.

## **7.0 Accounts subject to Recovery**

7.1 Following the issue of invoices, unless there is a payment agreement in place, reminders will be sent for all invoices unpaid or partly unpaid after 7 days past the invoice due date, i.e. day 37 after the invoice is raised.

7.2 If an invoice is still unpaid after a further 14 days of the invoice reminder being raised (i.e. day 51 after the invoice is raised), a further letter will be sent that explains to the customer the potential action of a referral to a debt collection

agency or legal action through the County Council that may be considered by the Council.

- 7.3 If, after a further 14 days, after the issue of the letter referred to in 7.2, an invoice is still unpaid (i.e. day 65 after the invoice is raised) the Corporate Debt team will attempt to make telephone contact with the customer in an effort to resolve the matter. Where appropriate, payment agreements will be offered. If telephone contact cannot be made or contact is made but the customer does not wish to engage with the Council to resolve the matter, the Corporate Debt team will consider the most appropriate recovery route. Each case will be treated on its own merits, but the following guidance will normally be adhered to:
- 7.4 Single or multiple debts up to £500 may be referred to the Councils contracted debt collection agents to collect the amount overdue if all previous attempts to secure payment have been unsuccessful. No additional fees will be added to the original debt.
- 7.5 Single or multiple debts over £500 will be considered for action through the County Court if the originating service can provide the necessary supporting information to aid a successful prosecution.
- 7.6 Consideration will be given not to take further recovery but only in cases where it is reasonable, economic and in the interests of Council Tax payers to do so. In any case being considered for write off, the write off guidance in appendix 7 will be followed.
- 7.7 In appropriate cases where County Court action is considered appropriate, any failure of services to provide supporting information to aid a successful prosecution will result in the Corporate Debt team raising a credit note to cancel the charge and the loss of income will be met by the service who raised the original invoice.
- 7.8 For debts of £5,000 or more, the Council may also consider taking bankruptcy action through the courts if sufficient assets exist to meet the outstanding amount owing to the Council. Before such action is taken, the Council will always send a final letter inviting the customer to a pre-arranged meeting in an effort to make a payment agreement. Bankruptcy will be considered in line with the policy in Appendix 6.
- 7.9 In some instances, despite a County Court Judgement being obtained and enforcement action being taken, such action may, in some cases, fail to produce a payment towards some or all of the debt due. In these circumstances, further action is limited and in these cases the invoice will be considered for write off in accordance with the write off guidance in appendix 7.

## **8.0 Credit Notes**

- 8.1 There is a clear distinction between raising a credit note and writing off a debt.
- 8.2 A credit note to cancel or reduce a charge must only be issued to
- Correct a factual inaccuracy or administrative error in the raising of the original invoice

- Cancel an invoice where a dispute has not been resolved within 28 days
  - Adjust the amount of debt due
  - Cancel an invoice where the service is unable to provide sufficient documentary evidence to support the recovery of an outstanding invoice.
- 8.3 All credit notes must be supported by evidence that validates the reason for reducing or cancelling the invoice.
- 8.4 When raising credit notes, services must ensure that all information is fully completed, in the same way as invoices are raised, including:
- It must reflect an agreed reduction in value and be issued within one month of the agreement.
  - Description of supply
  - Rate and amount of VAT charged
  - Total charge
  - In addition the invoice number and date of the original VAT invoice should be shown on the credit note.

## **9.0 Corporate Reporting and Monitoring**

- 9.1 All Chief Officers will be issued with a monthly report to show debt levels outstanding within their portfolios. The reporting systems will show the breakdown of aged debt levels including a comprehensive breakdown of the invoices raised these within their services which remain outstanding.
- 9.2 In the interests of transparency and accountability, a half yearly report will also be presented to the chief officer's team showing debt levels across the organisation together with a full breakdown of aged debt levels within each portfolio.

## **10.0 Write Offs**

- 10.1 The Council recognises that where a debt is deemed to be irrecoverable, especially after all recovery options have been considered and/or taken, prompt write off of such debts, including reclaiming of VAT from HMRC (where applicable) is appropriate and good practice in certain circumstances and in line with the policy in Appendix 7.

## **APPENDIX 4 – Housing Rent Recovery – Introductory Tenancies**

### **1.0 Introduction**

- 1.1 The council adopts a Rent First approach in the collection of rent and rent arrears contacting tenants at an early stage.
- 1.2 The Housing Act 1996 has given the Council the option of using Introductory Tenancies for new tenants.
- 1.3 Flintshire County Council decided to offer Introductory Tenancies to new tenants as from 1<sup>st</sup> January, 1998. However there are some exceptions:-
  - New tenancies granted to existing assured tenants from a social landlord will be secure tenancies.
  - Any new tenancy granted, where one of the new tenants already has a secure tenancy, will be a secure tenancy.
- 1.4 Introductory Tenancies are for a limited period of 12 months, whereupon they will automatically become secure, unless an application has been made to the County Court for possession within the 12 month period.
- 1.5 Therefore to pursue repossession of a property under the rules and regulations of Introductory Tenancies requires the Income Officer to comply with a strict timetable.
- 1.6 The last opportunity to apply to the County Court will be in week 50 of the tenancy (to allow the County Court to issue their papers before the 12 month anniversary of the tenancy being signed for), which means that a Notice of Proceedings for Possession needs to be served at the end of tenancy week number 45 at least.
- 1.7 A weekly rent arrears extract is produce to enable Income Officers to identify tenants with rent arrears on the geographical areas managed.
- 1.8 All recovery action is automatically recorded on the electronic diary.

### **2.0 Rent Recovery Process**

- 2.1 In the event of an introductory tenant failing behind with a rent payment the income officer will contact by telephone requesting payment in full.

### **3.0 Notice of Proceedings for Possession for Procedures**

- 3.1 If the Income Officer establishes a need to serve a Notice of Proceedings for Possession, the officer generates a Notice of Proceedings package.
- 3.2 The Income Officer serves the Notice of Possession, including an application for a Review Hearing, sent to the tenant by first class post.

- 3.3 However, if the tenant is elderly, or there has been no previous contact with the tenant, every effort must be made to establish personal contact when serving the Notice of Proceedings.
- 3.4 Income Officers have the discretion of withdrawing the notice at this stage, if it is felt appropriate.
- 3.5 The tenant has the opportunity to attend the Review Hearing within 7 days of the delivery of the Notice.

#### **4.0 Review Procedures**

- 4.1 The tenant may bring a friend/representative to the Review.
- 4.2 The Review will be conducted by the Income Team Leader and the Senior Housing Officer.
  - a) If the Review finds in favour of the tenant the Introductory Tenancy continues until it becomes Secure. The Notice of Proceedings at this stage becomes invalid. If at a later stage the tenant falls back into arrears a new notice is to be served.
  - b) If the review finds in favour of the Council, the Income Officer applies to the County Court for Possession Order as soon as the notice expires.

If a tenant fails to apply for a Review and remains in arrears 4 weeks after serving the notice, the Income Officer has the discretion to proceed to Court.

Once the County Court issues their papers, the tenancy will remain Introductory until the matter is resolved.

- c) Another option available to the Council is to offer an Introductory Tenant an extension of 6 months to the trial period of the tenancy. To do so one of the following conditions have to be met:
  - The Income Officer has served a Notice of Extension, including a right to appeal (Review of Decisions to Extend a Trial Period Wales Regulations 20076. by first class post on the tenant at least 8 weeks before the original expiry date of the Introductory Tenancy. If the tenant requests a review of the Council's decision to extend the tenancy.
  - The tenant did not attend the Review Hearing but the Income Officer does not want to proceed to court yet.
  - The decision of a review was to extend the tenancy.
  - Following the notice of possession and prior court action the tenant will receive written notification of the pre-action protocol.



## **5 Pre-court Procedures**

5.1 The Income Officer generates the following:-

- Copy of the court pro-forma, case history notes.
- The copy of the Notice of Proceedings for Possession, signed, dated and served.
- A completed copy of the Rent Arrears Review form, if available.
- Assessment of household Income and Expenditure, if available.
- Copy of the letter notifying of the Review Panel's decision.

5.2 Each Income Officer is responsible for controlling and monitoring their own court applications, to ensure that notification of Court Hearing dates are received from the County Court promptly.

5.3 Each Income Officer is responsible for maintaining a central register (e.g. Electronic court diary/white board) in which the date of each and every Court Hearing is entered.

5.4 On receipt of the Court date, the Income Officer notifies the tenant in writing, advising the tenant of the Court appointment. Good Practice guidelines suggest that a copy of the letter is to be sent to all tenants.

5.5 The Income Officer serves the Notice of Proceedings Possession, including an application for a Review Hearing is sent to the tenant by first class post.

5.6 If the tenant clears the rent account and legal costs incurred, to our satisfaction before the Court Hearing date, the Income Officer can withdraw the case completely, sending a letter to the County Court and allowing the tenancy to continue.

## **6.0 Cost Court Procedures**

6.1 Court cases will be heard at County Court.

6.2 It is mandatory for the Court to grant a possession order.

6.3 Documents and evidence required to be presented at the Court include:-

- History of the account.
- Court pro-forma
- An up to date statement of account

6.4 The only power available to the Court is to postpone the date of possession for up to 14 days, and in the case of exceptional hardship for up to 6 weeks.

6.5 If the Income Officer is dissatisfied with the conduct of the tenancy, but there is no justification to end the tenancy through a Court Order, there is the option to extend

the Introductory Tenancy for a further 6 months. Following consultation with the Income Team Leader, a Notice to extend the tenancy should be issued. This must be hand delivered to the tenants at the property no later than 8 weeks before the end date on the original tenancy agreement.

## **7.0 Post Court Procedures**

7.1 Written notification of the court decision is sent to the tenant.

## **8.0 Eviction Procedures**

8.1 The Income Officer completes a Request for Warrant of Possession of Land through the county court computer system (Pcol= possession claims on Line).

8.2 The County Court will acknowledge the application and will confirm the date of eviction via electronic mail.

8.3 Each Income Officer is responsible for controlling and monitoring their court applications, to ensure that notification of eviction dates are received from the County Courts promptly.

8.4 Notification of the eviction day is sent electronically to the Housing Neighbourhood, Housing Options and Repairs Teams.

8.5 If the tenant clears all the rent arrears before the due date of eviction (including court costs), the Council has the discretion to continue with the eviction or offer a new Introductory Tenancy. Income Officers need to be aware that even if all the arrears and costs are paid, the Council can still take possession of the property. Consultation with the Neighbourhood Manager is necessary at this stage.

8.6 Every effort should be made to keep in personal contact with the tenant right up to the eviction date, providing the tenant with a written copy of the actual procedure on day of eviction 7 days before eviction is due to take place.

## **9.0 Proceeding to Evictions**

9.1 Before an Income Officer can apply for an eviction they must first prepare a detailed Case History detailing action taken, in report form, i.e. Notice of Possession Proceedings served, Court action taken and orders/costs awarded, agreements made, support and advice given by internal and external agencies, any previous Eviction dates & Suspension Hearings

9.2 It should also include any comments/notes the Income officer thinks will support their case for an Eviction Application.

9.3 The income Officer should then send this report, electronically, to the Income Team Leader for consideration.

9.4 At this stage the application can be refused, comments received and action reconsidered if appropriate. Any information regarding action taken or justification for the application should be welcomed at this stage and, if necessary, further action taken by the Income Officer to prevent an Eviction taking place.

## **APPENDIX 5 – Housing Rent Recovery – Secure Tenancies**

### **1.0 Introduction**

- 1.1 The council adopts a Rent First approach in the collection of rent arrears, by contacting tenants at an early stage.
- 1.2 The majority of tenancies in Flintshire are secure tenancies. New tenants will be given an introductory tenancy for the first 12 months then will automatically become secure as long as they are not subject to legal action by the Council.
- 1.3 The computer system produces a weekly rent arrears extract to enable Income Officers to identify tenants with rent arrears on the geographical areas managed.
- 1.4 The income Officer is to be aware of the tenant's entitlement to Housing Benefit, Universal Credit and ensure that the tenant is claiming any other relevant benefits.
- 1.5 Personal contact must be maintained throughout the rent arrears procedure, and if any arrangements to pay are agreed with the Income Officer is to confirm the arrangement in writing.
- 1.6 Regular monitoring is imperative. If the tenant fails to comply with any arrangement's to pay, they may receive a Notice of Seeking possession which is the first stage of legal proceedings.
- 1.7 Debt counselling services are offered to tenants such as Shelter Cymru and Citizens Advice Flintshire and will refer cases to the councils Housing Options team where necessary.
- 1.8 The Support Service Provider (i.e. Housing Options Team) needs to be informed of each stage of legal action to be taken by the Income Officer (starting with the serving of a Notice).
- 1.9 If personal contact with the tenant proves to be difficult, every effort must be made to find out the whereabouts of the tenant.
- 1.10 Before the serving of Notice of Seeking Possession, any contents insurance premiums need to be cancelled and the tenant notified in writing of same.
- 1.11 Ensure all actions taken in chasing rent arrears (inc. date applications are made to Court, date of evictions etc.) are recorded on the rent arrears electronic diary.

### **2.0 Rent Recovery Process**

- 2.1 Initial contact is made by telephone, text message or email.
- 2.2 If no response a Notice of Seeking Possession may be served on the tenant.

### **3.0 Notice of Seeking Possession**

- 3.1 The Income Officer serves the Notice of Seeking Possession by first class post which is electronically documented on the tenants rent account.
- 3.2 However, if the tenant is elderly, or there has been no previous contact with the tenant, every effort must be made to establish personal contact prior serving the Notice of Seeking Possession.
- 3.3 Income Officers have the discretion of withdrawing the Notice of Seeking Possession at this stage, if it is felt appropriate.
- 3.4 After serving the notice, the Income Officer monitors the rent account carefully, continues to contact the tenant.

### **4.0 Pre-Court Procedures**

- 4.1 The Income Officer requests authorisation to proceed to court as follows:-
  - Possession Order.
  - Warrant for Possession.
- 4.2 The income officer forwards the court pro-forma to the Income Team Leader for consideration. On receipt of the authorisation the income officer applies to court.
- 4.3 The Income officer is responsible for recording the court hearing date and will attend the hearing.
- 4.4 Good practice dictates that no later than 14 days before the Court Hearing the Income Officer notifies the tenant in writing of the court date.

### **5.0 Court Proceedings**

- 5.1 Court cases will be heard at the County Court.
- 5.2 To help both the Housing and Court Officers it is proposed to standardise the procedure as follows:-
  - The cases may be heard in Court or in chambers.
  - The Officer takes to the Court the standard pro-forma, original notice of seeking possession together and case notes.
  - The Officer may be invited to swear the oath and state his/her position in the organisation.
  - The Officer needs to be prepared to answer questions asked by the judge. The judge may wish for the Officer to elaborate on any information provided.
  - Finally the judge will invite the Officer to detail the order requested by the Council (e.g. an order for possession suspended for as long as tenant pays the weekly rent plus £\_ off the arrears).
  - The Officer completes his/her own copy of the court pro-forma accordingly.

## **6.0 Court Order Suspended**

- 6.1 If the tenant fails to comply with the terms of the suspended order, the Income Officer contact the tenant in the first instance.
- 6.2 If no response the next stage will be to apply for a warrant of eviction advising the tenant in writing.
- 6.3 If the Court has adjourned the case generally or on terms and the rent arrears have increased within a 12 month period, apply back to the Court.
- 6.4 If the Court has adjourned the case for a fixed period (e.g. 3, 6 or 12 months) and the arrears increase within that period, the officer will apply back to the court. Please note that if the case has not been restored during the given period the case will be struck out by the Court and the Income Officer will need to recommence the arrears procedure from the beginning.

## **7.0 Eviction Procedures**

- 7.1 The Income Officer completes the court pro-forma and forwards to the Income Team Leader for consideration/authorisation.
- 7.2 The Income Officer will apply to court via the website Pcol.possession claim online.
- 7.3 Details of the eviction date are to be forwarded to the Neighbourhood, Repairs and Housing Options teams.
- 7.4 Every effort should be made to keep in personal contact with the tenant right up to the eviction date, providing the tenant with a written copy of the actual procedure on day of eviction a few days before the eviction is due to take place.
- 7.5 The tenant has the right to apply to have the eviction suspended by an ex-party agreement, 'Notice of Application form is completed and sent to the court by the tenant.
- 7.6 If the tenant applies for the eviction warrant to be suspended the Court advises the Council of a date and time when that application will be heard. The Income Officer attends the hearing to present the Council's case.
- 7.7 If the County Court decrees that the eviction is suspended, a Variation Order will be granted and the Income Officer notifies the tenant of the details of the new Order in writing.
- 7.8 If and when an order is ever satisfied, during the period between receiving an eviction date and reaching that date, the County Court should be advised in writing, with a copy sent to the tenant.

## **8.0 Proceeding to Evictions**

- 8.1 Before an Income Officer can apply for an eviction they must first prepare a detailed Case History detailing actions taken to recover the debt in line with the pre-action protocol. Which is forwarded to the Team Leader for authorisation.
- 8.2 At this stage the application can be refused, comments received and action reconsidered if appropriate. Any information regarding action taken or justification for the application should be welcomed at this stage and, if necessary, further action taken by the Income Officer to prevent an Eviction taking place.

## **APPENDIX 6 - Bankruptcy Policy**

### **1.0 Introduction**

- 1.1 The Council is committed to using the most effective recovery methods available and this policy will ensure that the Council's very occasional use of bankruptcy is consistent and complies with all relevant legislation and best practice.
- 1.2 Council Tax and Business Rate regulations allow for debts over £5,000 to be considered for bankruptcy providing that Liability Orders have been obtained. For Sundry debts and Housing Benefit overpayments, bankruptcy proceedings may be taken against debtors who owe in excess of £5,000 where a County Court Judgement has been granted in respect of the debt.
- 1.3 The Council also recognises that serious nature of bankruptcy which may result in an insolvent person's property being vested in a trustee – someone who realises and distributes payment among the creditors in final settlement of their claims. The serious nature of this action cannot be under estimated as the consequences could result in a person losing their home and possessions, and be liable to pay a charge and statutory fees/costs associated with bankruptcy amounting to several thousand pounds
- 1.4 Given that the Council is not a preferential creditor for the purposes of bankruptcy there is no guarantee of a dividend being paid. The Council will only consider using bankruptcy as a last resort and final option and will take a cautious and diligent approach in deciding if bankruptcy is reasonable action to take.
- 1.5 Bankruptcy action takes place in the debtors local County Court with bankruptcy jurisdiction unless the debtor resides in London, in which case the action takes place in the High Court or the Central London High Court.
- 1.6 The Revenues Team will manage the administration of bankruptcy cases and proceedings in respect of Council Tax, Business Rates, Sundry Debt and Housing Benefit overpayments, with the assistance from Legal Officers in appropriate cases.

### **2.0 When bankruptcy Action may be taken**

- 2.1 The Corporate Debt Team may consider using bankruptcy proceedings in the following circumstances:
  - Where the debt exceeds £5,000 and the debtor appears to have sufficient assets or equity to ensure the debt is recoverable by the Official Receiver of the Insolvency Service or the Trustee in Bankruptcy.
  - Where the debtor is not prepared to make a payment agreement to clear the debt within a reasonable and acceptable timescale.
  - Where other methods of recovery are considered inappropriate or have failed and bankruptcy action, as a last resort, appears to be a fair and proportionate course of action.

### **3.0 Recording Information and Decisions**

- 3.1 When the Council consider bankruptcy proceedings, a log of events will be maintained on the customers account throughout the process to ensure that bankruptcy remains the most appropriate course of action.
- 3.2 **Decision Making (stage 1)** - Prior to commencing bankruptcy proceedings enquiries will be made of the Revenues and Benefit records to:
- Establish a debt history and whether any previous debts have been collected within a reasonable period by other means.
  - Ensure that all known benefits, discounts and exemptions have been granted based on the information held
  - Establish whether, based on any information held, the debtor may be vulnerable or unable to deal with their day to day financial affairs or have had previous debts written off.
- 3.3 Contact will also be made with relevant portfolio to ascertain if the debtor is known to them and therefore may be vulnerable. If the debtor is currently receiving any care service further enquiries will be made with the key worker to establish if the debtor may be vulnerable by way of, for example, age, mental illness, serious learning difficulties or where it is known that the debtor is unable to deal with their own affairs. Should it be apparent the debtor has such difficulties then consideration will be given to whether the help of other agencies should be sought, and to the appropriateness of pursuing an alternative course of action, including the potential to write off in line with the policy in appendix 5.
- 3.4 **Decision Making (stage 2)** – If records held and enquiries with relevant Directorates do not indicate that the debtor may be vulnerable then enquiries will be made with a credit reference agency and the Land Registry to establish information about the debtor's financial standing and ownership of property and assets.
- 3.5 **Decision Making (stage 3)** – In order to assist with the decision making process as to the appropriateness of bankruptcy a visit will be made to the debtor's home address (and/or business address if known) to discuss the matter and to establish whether a payment agreement can be established.
- 3.6 In the event that the visit establishes that the debtor may be vulnerable then details of the perceived vulnerability will be recorded. Further enquiries will then be made with the relevant support services within the Council together with possible referral to other advice agencies and to determine an alternative method of recovery.
- 3.7 If a payment agreement cannot be made, or contact with the debtor cannot be made, the Council will serve a final letter will be sent to the debtor that explains the intended action, confirms the charges due, and offers a final opportunity to arrange payment within 14 days. The letter will also advise the debtor to seek independent advice from one of the advice agencies. A copy of the Insolvency Service's publication – 'A guide to Bankruptcy' will also be sent to the debtor.



3.8 **Decision Making (stage 4)** – If payment is not made and no satisfactory arrangement agreed, the matter will be discussed with the Head of Finance and if appropriate with the service department to approve the next course of action associated with bankruptcy proceedings.

#### **4.0 Statutory Demand**

4.1 Where a decision is taken to commence bankruptcy proceedings a formal 'statutory demand' for payment will be issued by the Council to the debtor and the service of the statutory demand upon the debtor is the first formal stage in bankruptcy proceedings.

4.2 Guidance on service requirements are set out in the Insolvency Proceedings Court Practice Direction. A letter will also be issued with the statutory demand setting out the intentions of the Council and what the debtor needs to do to comply with it.

4.3 The debtor will still have the opportunity to contact the Council, even at this stage and, depending on information supplied, it may still be possible to a short term repayment arrangement. The debtor also has the right to apply to the County Court to have the Statutory Demand set aside.

#### **5.0 Bankruptcy Petition**

5.1 The Council may present a Creditors Bankruptcy Petition to the County Court within four months of service of the Statutory Demand Notice if the debtor has not complied with it, or if alternative payment arrangements cannot be agreed following the service of the Statutory Demand.

5.2 Prior to presentation of the Petition, further enquiries will be made all relevant Directorates to establish whether the debtor has become known to them during the recent process in which case the action will be reconsidered.

5.3 The Council is required to serve the Petition upon the debtor and guidance for service requirements are set out in the Insolvency Proceedings Court Practice Direction.

5.4 At this stage, the debtor is required to pay the debt in full before the hearing of the Petition at Court otherwise the Court will be asked to make a Bankruptcy Order. The Council will always support a short adjournment of the court proceedings if the debtor provides the court with evidence that they will be able to pay in full within a very short period.

5.5 If, between the Petition being presented to the Court and the hearing of the Petition, it becomes known that the debtor does not have the capacity to deal with the matter, then full consideration will be given to seeking an adjournment of the proceedings to enable both the debtor and the Council to obtain further advice.

## **6.0 Making of a Bankruptcy Order**

- 6.1 If the Court awards a Bankruptcy Order, the Official Receiver of the Insolvency Service is immediately appointed Trustee in Bankruptcy.

## **APPENDIX 7 - Write Off Policy**

### **1.0 Introduction**

- 1.1 The Council recognises that where a debt is irrecoverable, prompt and regular write off of such debts is important so that the Council can budget for bad debts. An integral part of debt recovery is the effective management of bad debts to ensure that resources are applied efficiently to the collection of monies outstanding which can reasonably be expected to be collected.
- 1.2 The Council will seek to minimise the cost of write offs to the local tax payers by taking all necessary and appropriate recovery action to recover what is due. All debts will be subject to the full collection, recovery and legal procedures and considerations as outlined in this Corporate Debt Recovery Policy Framework.
- 1.3 Write offs will be carried out in accordance with the Councils Financial Procedure Rules, and only in cases where
- The demand or invoice has been raised correctly and is due and owing;  
**and**
  - There is a justified reason why the debt should no longer be pursued.
- 1.4 The Corporate Finance Manager/Section 151 Officer will have the authority to write off debts of up to £5,000 (in aggregate) for each debtor. Write off of debts between £5,001 and £24,999 will be considered for write off by the Corporate Finance Manager/Section 151 and in consultation with the Cabinet Member for Corporate Management via delegated powers. All debts considered for write off in excess £25,000 will be referred to Cabinet for approval.
- 1.5 Debts will normally only be considered for write off where the account is 'closed' and there are no reoccurring debts. Only in exceptional circumstances will amounts on 'live' and ongoing accruing debts be considered for write off. All such cases must demonstrate that further recovery will not achieve collection of the debt.
- 1.6 The Council will record all write off decisions.

### **2.0 Reasons for Write Off**

- 2.1 Is it not possible to list every possible scenario which could make a debt suitable for write off, however the following reasons capture the main reasons why debts become irrecoverable:

Absconded / No Trace	The debtor has left the address listed on the invoice/bill and all reasonable attempts, including using trace agents, to find the debtor have failed.
Deceased	The debtor has passed away and there is evidence of in-sufficient or no funds in the deceased persons estate to pay the amount outstanding

Debt 'out of time'	Debts over 6 years old and where a Liability Order has not been granted (Council Tax and Business Rates), or no contact has been made and no payments have been received (in accordance with the Limitation Act 1980 as amended).
Small Debts and debts Uneconomical to pursue	When all recovery processes have been tried or considered and where the cost of proceeding to recover would be cost prohibitive to the Council and to its taxpayers.
Debts subject to a Relief Order	Where debts owed to the Council are subject to and included in a Debt Relief Order and cannot be recovered.
Bankruptcy	The debtor is declared bankrupt and sums due before the date of bankruptcy cannot be recovered.
Companies in Liquidation/ Wound Up / Dissolved Struck Off	The Company is a Limited Company registered with Companies House and no longer exists and there is no means of recovering the debt.

### **3.0 Conditions for re-claiming VAT on Bad Debts**

- 3.1 The Council will be entitled to a refund of VAT from HMRC on any bad debts (excluding Council Tax, Business Rates and Housing Benefit Overpayments) if the conditions prescribed below are met :
- Goods and services have been supplied and VAT has been accounted for and paid to HMRC but no payment (or only a part payment – see 3.4) has been received;
  - The debt has, or is, to be written off in the accounts and transferred to a bad debt account
  - The debt must not have been assigned
  - The debt has remained unpaid (or partly unpaid) for six months or more after the later of the date payment was due or the date of the supply of the goods or services
  - The re-claim of VAT is made within three years and six months of the later of the date payment was due or the date of the supply of the goods or services.
- 3.2 The Council is required, in accordance with HMRC guidance, to retain copies of all invoices and bad debt account details for a fixed period of six years
- 3.3 VAT on bad debts will be re-claimed on the monthly VAT return, ensuring that appropriate VAT codes are debited with the appropriate amounts to reduce the amount of the write off recorded against the appropriate bad debt provision for the relevant Directorate.

- 3.4 Where the Council is re-claiming VAT on debts where part payment is received, the entitlement to bad debt relief on VAT is based on the amount outstanding for the supplies made. For a single supply, where no payment is received, the amount of VAT accounted for can be reclaimed. If a part payment of the debt is received, a refund can only be claimed on the VAT relating to the amount still unpaid.
- 3.5 HMRC advise that payments should be allocated to the earliest supply made unless the customer specifies that a payment is for a particular supply and pays for that supply in full.
- 3.6 In bad debt cases where everything except the VAT element is paid, if the customer refuses to pay the VAT element of an invoice and this is the only element outstanding, relief is limited to the VAT element of the total debt outstanding. For example, if the charge was £100 (which was paid) and £20 VAT remains outstanding, the Council is entitled to re-claim VAT of £3.33 (i.e. 1/6 of £20).
- 3.7 Any bad debt relief claimed on sales must be at the same rate of VAT as used for those sales, that is, 20% from 4 January 2011, 17.5% from 1 January 2010 to 3 January 2011 and 15% from 1 December 2008 to 31 December 2009.
- 3.8 If VAT is re-claimed on a bad debt and a payment is later received from the customer, the VAT element included in the payment must be paid over to HMRC in the tax period in which the payment is received.
- 3.9 For any technical queries on VAT treatment of invoices please refer to the Council's Tax Advisor.