

## APPENDIX 1

# WIRRAL CORPORATE DEBT RECOVERY POLICY

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## 1. INTRODUCTION

- 1.1. This document details policies on the billing, collection and recovery of money due to the Council.
- 1.2. The scope of this policy covers the principal areas of debt recovery within the Council i.e. Council Tax, National Non Domestic Rates, Overpaid Housing Benefit, and Sundry Debts. It is not intended that this policy will cover the collection of parking fines, for which there is a separately published policy. The policy may also be used to provide a framework for other debts collected by the Council in the future.
- 1.3. Sums due to the Council can be a mixture of statutory and non-statutory charges. The method for billing and recovery of statutory debts is tightly prescribed. Enforcement practices must take account of this diversity.
- 1.4. The aim of the policy be summarised as  
  
“Where the Council seeks to collect money, the Council will issue bills promptly and correctly. Where recovery action is required, the Council will act quickly, fairly and impartially, but with due regard to the social welfare and human rights of customers”
- 1.5. This policy sets out the general principles to be applied in relation to debt management across all services provided by the Council. It is to be used together with more detailed procedural guidance for staff.

## 2. POLICIES COMMON TO ALL TYPES OF DEBT

- 2.1 Every demand for money will be addressed to the person who is liable to pay it. The name on the demand will be that of a person or body possessing the appropriate and proper “legal personality”.
- 2.2 Demands will, wherever possible, be issued on the day of production.
- 2.3 Individuals will be treated consistently and fairly regardless of age, sex, gender, disability and sexual orientation and staff are to ensure that their rights under the Data Protection and Human Rights legislation are protected
- 2.4 All relevant information relating to a demand will be kept either in paper or scanned image format until at least six years after the demand is raised. If at the end of that six-year period the demand still remains unpaid, the supporting documentation will be retained until either the bill is paid or the debt is written off. **Heads of Service should ensure that these prime records are easily accessible by key staff to ensure that, in the event of recovery action, proof of the debt can be easily undertaken.**
- 2.5 The Council will attempt at all times to use the most appropriate and effective method of debt recovery in order to maximise income.

- 2.6 The Council will encourage the most cost effective payment methods with the emphasis being on unmediated electronic means where possible. “Unmediated” in the context of electronic payment methods means a method of payment that requires no human intervention by officers of the Council to achieve its crediting to the account in question.
- 2.7 In the interest of economy, and where appropriate, all demands, reminders and final notices shall be issued by second class post unless contrary to regulations or other statutory or legal requirements.
- 2.8 Authorised officers and others referred to in this policy, will be able to intervene in the recovery cycle in appropriate circumstances to deal with hardship or disputes. This includes the ability to make deferred payment arrangements where immediate payment is impossible due to lack of means. Officers making arrangements will take into account prime record retention needs (paragraph 2.4.)
- 2.9 Where the potential for a statutory benefit or discount exists in relation to the debt, efforts will be made to make the debtor aware of such opportunities and they will be assisted and encouraged to apply for these.
- 2.10 All notices issued by the Council will comply with the corporate style guidance and be readily identifiable as being from the Council.
- 2.11 Where either national or local performance indicators exist the Council will strive for top quartile performance and will publish actual performance against these targets annually. Progress reports will be made available at regular intervals during the year to the Council Excellence Overview and Scrutiny Committee
- 2.12 The Council welcomes the involvement of welfare agencies where authorised by the debtor in connection with debts due to the Council and recognise the benefits that these organisations can offer both to the debtor and to the Council in prioritising repayments to creditors and in maximising income available to the debtor.
- 2.13 The Council supports the provision of advice from a number of agencies such as Age UK, Citizens Advice Bureau and National Youth Advocacy Service and, when requested, will work in conjunction with them for the benefit of the debtor.
- 2.14 In cases of multiple debts there must be close liaison between services. Multiple debts are where a debtor has significant debts in more than one service area, e.g. Council Tax and housing benefit overpayment. Such cases can present problems in determining the relative priority of the individual debts for both the individual concerned and the staff preparing settlement.

- 2.15 For such cases, staff are expected to liaise and agree an appropriate means of coordinated recovery with regard to the Council Fair Debt Policy, which reflects these policy aspirations together with the need to balance repayment profiles across all debts due to the Council. A copy of the Council's Fair Debt Policy is recreated in Appendix 3.
- 2.16. The Council recognises that prompt recovery action is key in managing debt and maximising income. The Council therefore aims to:
- Regularly monitor the level and age of debt.
  - Set clear targets for the recovery of debt.
  - Have clear written recovery procedures.
  - Set priorities for specific areas of debt and assess recovery methods to ensure maximum recovery.
  - Regularly review irrecoverable debts for write-off.
- 2.17. All debts that are written off will be reported to Members for noting or authorisation dependent on the scheme of delegation. The VAT on written off sundry debt invoices will be recovered by the Authority in accordance with the rules and procedures laid down by HM Revenues and Customs.
- 2.18. Where an external agency is procured to assist with the delivery of a service the flow of information between the Council and the agency should, wherever possible, be in a secure electronic format.
- 2.19 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.

### **3. PRINCIPLES OF ENFORCEMENT (ALL DEBTS)**

- 3.1 The Council will follow the principles outlined below. These principles are derived from the Government *Enforcement Concordat* (set out in Appendix 2), to which the Council is fully committed:
- Our action will be **proportional**
  - Our approach will be **consistent**
  - Our actions will be **transparent**
  - Our staff will be **helpful**
- 3.2 **Proportionality** – Proportionality allows for a balance to be struck between the potential loss of income to the Council and the costs of compliance.

3.3 **Consistency** – Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency in:

- The advice the Council gives.
- The use of our powers.
- The recovery procedures used.

The Council recognises that consistency does not mean simple uniformity. Officers need to take account of many variables such as:

- The social circumstances of the debtor.
- The debtor's payment history.
- The debtor's ability to pay.

3.4 **Transparency** – Transparency is important in maintaining public confidence. It means helping people to understand what is expected of them and what they should expect from the Council. It also means explaining clearly the reasons for taking any recovery/enforcement action.

If action is required, the reasons why must be clearly explained, in writing, where required. If action is required time scales must be clearly stated. A distinction must be made between advice and legal requirements.

Communications should be in plain English and large print with Braille or translation versions being made available to customers upon request.

An opportunity must be given to discuss what is required to comply with the law before formal enforcement action is taken. A written explanation must be given of any rights of appeal against formal enforcement action either before or at the time the action is taken.

3.5 **Helpfulness** - The Council believes that prevention is better than cure and that its role, therefore, involves actively working with all who engage with it to advise and assist with compliance.

Council staff will provide a courteous and efficient service and staff will identify themselves by name.

A contact point, telephone number and /or email address will be provided for further dealings with the Council and "clients/customers" will be encouraged to seek advice from the Council, where appropriate.

#### **4. WRITE OFFS (ALL DEBTS)**

- 4.1 The Council recognises that where a debt is irrecoverable, prompt and regular write off of such debts is good practice.
- 4.2. The Council will seek to minimise the cost of write-offs by taking all necessary action to recover what is due. All debts will be subject to the full recovery, collection and legal procedures as outlined in this policy.
- 4.3. The Council reserves the right to resurrect the debt if circumstances that resulted in the write off alter (e.g. a forwarding address has been found in respect of a debtor who the Council had not been able to trace).
- 4.4. Irrecoverable debts will be referred to the Director of Finance on a regular basis.
- 4.5. The limitations for writing off irrecoverable debts are those contained within the Financial Regulations.
- 4.6. Debts may be referred to the Director of Finance for write-off in the following circumstances:
  - Debt remitted by a Magistrate.
  - The Council has evidence to confirm the claimant is suffering a severe physical or mental illness, which renders enforcement action inappropriate.
  - The Council is unable to trace the debtor.
  - The debt is not cost-effective to pursue due to small balance.
  - The debt is not cost-effective to pursue due to the likelihood of payment balanced against the cost of proceedings.
  - The debtor has died and there are no or insufficient funds in the estate to settle the debt.
  - The debtor is subject to formal insolvency proceedings and there is little likelihood of a dividend.
  - The age of the debt is such that it is statute barred
  - The debt has been recommended for write off by the Director of Law.

#### **5. POLICIES SPECIFIC TO SUNDRY DEBTS**

- 5.1 Service providers MUST endeavour to obtain payment in advance or at the time of service delivery wherever permissible. Sundry debt invoices should ONLY be raised where payment in advance for a service is inappropriate
- 5.2 It is the responsibility of Heads of Service to ensure that invoices are raised accurately and in a timely manner. Prime records that substantiate the debt should remain easily accessible whilst the debt is outstanding. It is the responsibility of Heads of Service to ensure that prime records are available whilst the debt remains outstanding.

- 5.3 Heads of Service should recognise that, in most cases, there should be a minimum value of an invoice, currently set at £50.00. It is recommended that wherever possible Heads of Service should attempt to consider other ways of collecting low value amounts. Such a minimum value **shall not apply** to accounts relating to legal charges for rights of access, drainage charges, ground rents etc where a contractual obligation exists to make such payments.
- 5.4 Except in the case of a demand payable by instalments or as otherwise contractually agreed, the settlement terms for all demands will be immediate.
- 5.5 Recovery action will commence no later than 28 days after the demand has fallen due. Standard recovery action profiles have been set up in consultation with service areas, however if any deviation is required from these profiles, the Senior Income Officer within the Sundry Debtor Section should be contacted to discuss requirements. These profiles will include pre-agreed determinations, as to when to instigate litigation.
- 5.6 The costs of enforcement action/litigation to recover sundry debtor invoices will be charged against the budget of the service raising the invoice. Any costs recovered from the debtor will be credited against these sums.
- 5.7 Sundry debtor invoices will be raised using the Accounts Receivable (AR) system.
- 5.8 All statutory methods of enforcement of debts shall be available for use. These include:
- Attachments of Earnings
  - Warrants of Execution (taking possession of goods/charging order on land/securities)
  - Garnishee Orders
  - Insolvency
  - Possession proceedings

These methods shall only be used with consideration to the principles set out within the Enforcement Concordat principles (as set out in 3.1 above)

- 5.9 Prior to statutory methods of enforcement being taken, officers may use, where cost effective to do so, external collection agents, visits to the debtor's home by designated Council Officers and telephone contact with the debtor as an alternative means of recovering sundry debts. Collection agents must only be used if their services have been properly procured by the Authority.
- 5.10 It is the responsibility of service departments, where legally permissible, to consider that the provision of future services to the debtor will be suspended until outstanding debts are settled.

- 5.11 Ownership of all sundry debts rests with the originating services and they can issue an instruction to cancel an invoice. It is the responsibility of the originating services to correspond or discuss with the debtor, issues relating to the validity of the debt.
- 5.12 The Sundry Debtor section will provide reports to the originating services on a regular pre-agreed basis as to the value of their outstanding accounts.

## **6. POLICIES SPECIFIC TO LOCAL TAXATION ACCOUNTS**

- 6.1 Council tax and Non-domestic Rate annual bills will be issued as soon as practical after the Council has set its Council Tax for the forthcoming year.
- 6.2 Non-annual bills will be issued as soon as practicable after the amount of liability is known with payment(s) being due on the earliest date(s) permitted by legislation.
- 6.3 All demand notices will be issued using the Council Tax or NNDR systems.
- 6.4 Where a tax or ratepayer can demonstrate an inability to make regular payment on the set instalment date, staff authorised by the Director of Finance will have the discretion to vary the instalment dates although the final instalment date should be before 31 March of the financial year in question. Arrangements beyond this period should be referred to appropriate Team Leaders for authorisation.
- 6.5 Reminders and final invoices will, as far as is operationally practical, be issued within 14 days of the payment default to which they relate in accordance with a recovery timetable, which is to be sent at the start of each financial year.
- 6.6 Summonses will be issued as soon as reasonably practicable after the default to which they relate.
- 6.7 All appropriate methods of enforcement of Liability Orders will be available for use. These include:
- Insolvency
  - Magistrates Court proceedings
  - County Court proceedings, as an alternative to the Magistrates Court
  - Distress
  - Committal to prison application (individuals only)

## Council Tax Only

- Deductions from Benefits
- Attachments of Earnings
- Charging orders
- Attachment of Members' Allowances
- Prosecution for failing to provide financial information
- Prosecution of employers for failing to implement Attachment of Earnings.

These methods shall only be used with consideration to the principles set out within the Enforcement Concordat principles (as set out in 3.1 above).

6.8 Officers of the Council and contractors acting in enforcement roles will comply with the Code of Practice for Bailiffs (Appendix 4).

6.9 Where recovery action has commenced, payment arrangements will generally only be entered into where the debt is secured by a liability order and/or the debtor agrees to make payment by way of direct debit. Arrangements will only be agreed by authorised staff and will generally only be agreed where:

- The debt will clear by the end of the financial year.
- In exceptional cases, authorised staff will have the discretion to accept longer term arrangements.
- The debtor's proposals are reasonable in comparison with the amounts that could be secured by taking alternative action.
- The debtor demonstrates a clear intention to honour the arrangement.

6.10 In cases where exceptional circumstances exist and it would not be in the interests of Council Tax payers in general to pursue enforcement action, arrangements may be made by authorised staff prior to a liability order being obtained and without the debtor agreeing to make payment by way of direct debit.

## 7. **POLICIES SPECIFIC TO THE RECOVERY OF BENEFIT OVERPAYMENTS**

7.1 The Council will monitor, maintain and improve systems to ensure that overpayments caused by official error are prevented and to minimise overpayments caused by misrepresentation or failure to report changes in circumstances.

7.2 All necessary invoices, reminder and final notices will be raised using the integrated revenues and benefits system.

7.3 Invoices will only be issued when a recoverable overpayment of housing benefit exists and cannot be recovered by other prescribed means.

- 7.4 The Council will further develop good practice in the creation, notification and recovery of overpayments, and will fully advise claimants and landlords and third parties if applicable, of their rights
- 7.5 The Council is also committed to operating a fair, equitable and effective appeals procedure in accordance with the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001
- 7.6 Statutory regulations specify how the Council must deal with and calculate overpayments of Housing Benefit and these regulations preclude the operation of blanket policies for recovery.
- 7.7 In summary the Council, when administering and paying housing benefit, is under a legal duty to:
- make decisions on all relevant changes of circumstances
  - make a separate decision on whether an individual overpayment is recoverable
  - exercise discretion in deciding whether or not to seek repayment of recoverable overpayments
  - make a decision as to which person or persons an overpayment is recoverable from
  - exercise further discretion regarding who to recover from (from the targets for recovery)
  - establish the desired method and/ or rate of recovery
  - send specified notifications to persons affected informing them of the decisions made
  - give persons affected, a right of appeal against relevant decisions
- 7.8 The Council will therefore seek to recover most overpayments unless it is not reasonable in a particular case. Examples where recovery may not be sought or may be suspended are:
- recovery of the overpayment is not cost effective to pursue
  - there is an outstanding query, dispute or appeal about the overpayment or its recovery
  - the claimant has died and there are insufficient funds in the estate to recover the overpayment
  - there is no reasonable prospect of recovering the overpayment
- 7.9 When making a decision not to recover the overpayment, the Council reserves the right to collect the overpayment at a later date, particularly where misleading information has led to the decision not to recover.

- 7.10 Methods of recovery can include deduction from Housing Benefit, deduction from other state benefits, instalment arrangements with the debtor and registering the debt with collection agencies/ County Court . Where a landlord or agent owes the debt, recovery may be made against Housing Benefit owed to other tenants.
- 7.11 The Council will at all times seek to facilitate mutually satisfactory repayment levels, offering instalment arrangements where appropriate.

## **8. USE OF EXTERNAL AGENTS**

- 8.1 As Council functions grow more dependent on sourcing external suppliers of services it is vital for those undertaking any procurement activity to work to a clear strategy for how these externally provided resources are selected, acquired and managed. The Council has therefore adopted a Procurement Strategy to which Departments must adhere.
- 8.2 All officers, when undertaking any procurement activity are bound by the code of conduct as set out in the Financial Regulations and Standing Orders.
- 8.3 The application of the Procurement Strategy together with accompanying policies must not conflict with the Financial Regulations and must be transparent and compliant with relevant law.
- 8.4 Where it is necessary for the Council to disclose data to a contactor and the Council has previously established a fair and lawful basis for the exchange of data, arrangements must be in place to ensure that data is not processed by the contractor in a manner not in keeping with Council instructions.