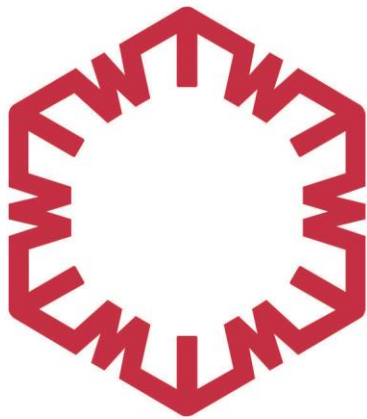


APPENDIX 13



Telford & Wrekin

C O U N C I L

Corporate Debt Recovery Policy

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1. Introduction and purpose

This purpose of this document is to outline Telford & Wrekin Council's policy on the billing, collection and recovery of money owed to the Council. Money is collected by the Council for a variety of reasons and the delivery of essential Council services relies on income being collected in an efficient and effective manner.

Money owed to the Council can include both statutory and non statutory debts, with the methods for billing and recovery of statutory debts generally being expressly prescribed by legislation. This policy will detail some of the statutory requirements, but will also outline our local procedure.

Where the Council seeks to collect or recover any income, demand notices and invoices will be issued promptly and accurately. Where recovery action becomes necessary, the Council will act quickly, fairly and impartially, having due regard to the welfare and human rights of individuals. This policy will provide a clear framework for the recovery of debt to ensure a fair and consistent process.

Management controls, regular performance monitoring and independent review processes are in place to ensure compliance with this policy and any associated procedures.

2. Policy Objectives

The objectives of the Council's Corporate Debt Recovery Policy are:

- To maximise income collection and minimise debt owed to the Council to support the delivery of key Council services for the citizens of the Borough.
- To maintain a fair and consistent approach to debt recovery whilst recognising and responding to individual circumstances, where the Council is made aware of these.
- To give consideration to the circumstances of vulnerable individuals and where appropriate, signpost individuals to relevant services within the Council or approved partner organisations.
- To take a "reasonable" approach to debt recovery.

3. Scope of the Policy

This Policy details the principles that the Council will apply in relation to debt management across the following types of income:

- Council Tax
- Non-Domestic Rates (or Business Rates)
- Housing Benefit Overpayments
- Sales Ledger Debts (for Council services)

There are specific rules and regulations which govern the recovery and collection of each type of debt and are set out in the respective appendices.

4. Policies applied to all debts

4.1 Notices issued

It is the Council's aim that:

- Every demand notice, invoice or recovery notice issued will be correctly addressed to the person or organisation liable to pay. The name used will be that of an individual or a body possessing "legal personality" and the address used will be the last known address.
- All documents issued, will be done so within the prescribed statutory timescales, in a timely manner and in accordance with the Council's corporate guidelines.

Notices will provide clear details regarding the debt, contact details of the Council and information outlining potential action should payment not be forthcoming.

Records or documentation relating to the demand notice or invoice will be retained in paper or electronic format for at least six years from the date that the demand notice or invoice is raised. If the debt remains unpaid at the end of the six year period, any supporting documentation will be retained until the balance is paid or the debt is written off.

Notices issued will conform to the Telford & Wrekin corporate style and will be easily identifiable as originating from the Council. All communications will be made available to customers in alternative languages, as well as alternative formats for those with sensory impairments upon request.

In the interests of economy, notices will be sent using second class or economy postage unless regulations or legislation require otherwise.

4.2 Method of Debt Recovery

The Council will endeavour to use the most effective and efficient method of collecting and recovering debt, giving consideration to the individual circumstances of cases where those circumstances are known. In order to maximise income, the Council will encourage payment by the most cost effective method with the emphasis being on automated, electronic means where appropriate.

Authorised Officers will have the power to intervene in the recovery cycle in appropriate circumstances, to address hardship or dispute situations. This will include the ability to make deferred payment arrangements where immediate payment is impossible due to financial or personal circumstances.

Where the debt could be reduced by application of a benefit or discount, the Council will be proactive in making the debtor aware of the appropriate benefit or discount and the debtor will be advised on how best to complete the application process.

4.3 External Partners

The Council supports the work undertaken by external agencies in providing advice and advocacy to debtors and will work co-operatively with them (where authorised to by the debtor) in connection with debts due to the Council.

4.4 Costs

Where legislation permits, we will seek to levy and recover from the customer any and all costs/fees that are legitimately due from the customer to the Council or its agents. Only in exceptional cases, will such costs/fees be waived.

Any charges associated with recovery of debt (i.e. Court costs) will be regularly reviewed to ensure they are reasonable, proportionate and commensurate with the costs charged by other local authorities.

4.5 Appeals and Complaints

Where an appeal has been received or further information has been requested, it will be usual practice for recovery action to continue. However, the Council may decide to suspend recovery action on the debt in appropriate cases.

All complaints received will be dealt with in line with the Council's corporate Complaint, Compliments & Procedure Policy. Complaints will be treated seriously and thoroughly investigated in every case.

4.6 Multiple Debts

There may be occasions where a business or individual owes more than one debt or type of debt to the Council (for example a Council Tax debt and a Housing Benefit overpayment). The legislation in relation to Council Tax and Non-Domestic Rates is specific with regard to recovery, and in the majority of occasions, all debts will be pursued individually by the Council.

Where a customer has multiple debts and is struggling to pay due to financial hardship, the Council will ensure it applies a co-ordinated and consistent approach to the recovery of the multiple debts, taking into account any legislative requirements for a particular type of debt. Where possible the Council will agree a payment arrangement with the customer which covers all debts owed to the Council.

4.7 Targets, Compliance and Monitoring

The Council recognises that prompt and proactive recovery action is crucial in maximising income for the Authority and managing debt in a responsible way. To achieve this, the Council will undertake to:-

- Set clear and achievable targets for the recovery of each debt type for each financial year. Progress against the targets will be monitored on a regular basis and reported periodically to the Senior Management Team and appropriate Cabinet Members. Remedial action will be considered and recommended where collection targets are not being met.
- Monitor the level and age of debt outstanding to the Council on a regular basis, ensuring that debts over 6 years old are analysed at least annually.
- Regularly review irrecoverable debts for write-off in accordance with the Write-off Policy included at [Appendix 5](#).
- Have clear written recovery procedures to support consistency and fairness of action.

5. Approach to Debt Enforcement

The Council will always aim to collect all balances due from businesses and individuals. However, it is inevitable that some business and individuals may experience difficulties in paying outstanding debts and further enforcement action will be required to recover debt arrears.

Where debt recovery becomes necessary, the Council is committed to operating under a framework of:-

- **Proportionate action** - the Council will give proper consideration to the available options when seeking to recover debts, taking into account the cost of collection, the size of debt outstanding and the likely effect of any action on the debtor balanced against the potential loss of income to the Council.
- **Transparency** – the Council will be open and honest in its decision making. If action is required, the reasons why will be clearly explained. Consequences of payments not being made will be clearly outlined. The Council will be proactive in helping customers to understand what is expected of them and what they can expect from the Council.
- **Fairness & Consistency** – the Council will aim to achieve consistency in the advice given and the recovery actions taken. Clear written procedures and policies will support Council Officers in making consistent decisions. Officers will also need to take into account a number of other factors to ensure that everyone is treated fairly but as an individual.

The Council will consider a debtor's ability to pay and will distinguish between debtors who *won't* pay and those who *cannot* pay their debts. An assessment of income and expenditure will normally be undertaken to establish ability to pay. Where genuine financial hardship exists, the Council will adopt a sympathetic and reasonable approach to collecting the debt.

Customers are advised to contact the Council when they are struggling to pay at the earliest opportunity. The Council will then engage with the customer to discuss their financial circumstances directly and will aim to reach a mutually agreeable payment arrangement.

The Council will continue to pursue recovery, which may include referral of debts to an external Enforcement Agent (formerly bailiffs), debt recovery company or pursue further legal action, where:-

- The debtor does not contact the Council to discuss their non-payment; or
- A reasonable payment arrangement cannot be agreed; or
- The debtor persistently defaults on payment arrangements.

5.1 Vulnerable Individuals

The Council recognises that some individuals may have a particular vulnerability which could affect their ability to manage their financial affairs. Those considered to be vulnerable could include:-

- Individuals with a physical or learning disability
- Those suffering from a life threatening illness

- Those rendered vulnerable by their age
- Those suffering from a recent bereavement
- Pregnant women

This list is not exhaustive.

The Council is committed to supporting customers who might be classed as vulnerable in the recovery of their debts so it is important that you contact us if you believe that you are vulnerable, or that someone you are acting on behalf of is vulnerable.

Where enforcement action is pursued on behalf of the Council and an enforcement agent becomes aware that an individual may be “vulnerable”, the enforcement agent will stop action immediately and seek guidance from the Council on how to proceed.

Control measures have been built into the Council’s Insolvency Policy (see [Appendix 4](#)) to ensure that every endeavour is made to establish whether an individual may have a vulnerability which could affect their ability to manage their financial affairs before bankruptcy action is pursued.

6. Irrecoverable Debts

The Council will always seek to minimise the cost of irrecoverable debts to the Council Tax payers of the Borough by taking appropriate action to recover outstanding debt. However, the Council recognises that where debt is deemed to be irrecoverable, prompt and regular write-off of such debts represents good financial practice.

The Write-Off Policy included at [Appendix 5](#) details a full list of acceptable reasons why a debt may not be pursued further. Any debts which are to be considered for write-off must comply with one of the circumstances stated below:-

- Legally excused debt
- Small balance on a closed account/claim
- Current address of debtor is unknown (untraceable)
- Debtor is deceased
- Balances unsuccessfully pursued by an enforcement / collection agent
- Not in the Council’s or public’s interest to further pursue
- Recovery procedures exhausted
- Balance subject to an Administration Order, Individual Voluntary Arrangement or Debt Relief Order
- Individual subject to bankruptcy / insolvency procedure
- Company in Liquidation / Insolvent, subject to a Company Voluntary Arrangement, in Administrative Receivership or ceased to trade (insufficient assets)
- Council Error
- Previous evidence of no assets and genuine inability to pay
- Out of time debts /old debts
- Charging Orders and Deferred Payment Schemes
- Full and final settlements.

Referral for write-off will be made to an appropriately Authorised Officer, who will consider all of the circumstances of the case before making a reasoned decision.

An Authorised Officer is a Council employee who is empowered or has permission to approve certain decisions or expenditure. The permission may be expressly granted in formal documentation such as the Council's constitution, or in some cases may be implied from the officer's level of seniority or rank.

7. Use of External Enforcement Agents (formerly bailiffs) or Recovery Agents

The Council may engage an external enforcement company or recovery agent to recover certain debts on its behalf. External enforcement services will be procured by way of a thorough, fair and transparent tender process which is compliant with the Council's Contract Procedure Rules. Enforcement Agents will be required to comply with the law, the National Standards for Enforcement Agents and good industry practice.

In line with the general principles of enforcement detailed at section 5 and specifically regarding proportionality of action, the level of debt will be considered before referral to an enforcement agent is made. Where the debt relates to amounts outstanding for Council Tax or Non-Domestic Rates, referral to an enforcement agent will not be made where the debt value is less than the current Magistrates' Court costs charged for the issuing of the summons and Liability Order.

7.1 Enforcement Agent Fees

Where the Council refers a debt to an Enforcement Agent for recovery, the Enforcement Agent must act in accordance with the Taking Control of Goods Regulations 2013 & Taking Control of Goods (Fees) Regulations 2014. This legislation details the procedure that Enforcement Agents must follow when taking control of goods and selling them to recover a debt, and sets out the fees that the Enforcement Agent must charge.

Current Enforcement Agent Fee Structure (effective 6 th April 2014)				
Fee Stage	Fee Feature	Fee Stage	Percentage Fees (additional fee if debt is great than £1,500)	
			£0 - £1,500	>£1,500
Compliance	This fee is added to your debt as soon as your account is referred to an Enforcement Agent for collection.	£75.00	0%	0%
Enforcement	If you do not arrange to pay the Enforcement Agent, or arrange to make payment and then do not pay as agreed, the Enforcement Agent will visit you and this fee will also be added to your debt.	£235.00	0%	7.5%
Sale	If you do not sign a Controlled Goods Agreement when an Enforcement Agent visits your property, or you do not pay as agreed after signing a Controlled Goods Agreement, the Enforcement Agent can remove and sell your goods and you will be charged this fee.	£110.00	0%	7.5%

Appendix 1

Council Tax and Non-Domestic Rates Recovery Policy

8. Introduction

Council Tax is a local tax payable for domestic or residential properties. The amount of Council Tax charged is dependent on the Council Tax valuation band that the property falls into and the amount of tax each council charges for that Council Tax band locally. Non-Domestic Rates (usually known as business rates) are a tax payable for eligible business properties. The amount of business rates charged is calculated using the rateable value of the property and a national “multiplier” which is set by central Government on a yearly basis.

The Council and its Officers is under a statutory duty to collect outstanding debts in accordance with the Council Tax (Administration and Enforcement) Regulations 1992 and the Non Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended).

9. Policy

9.1 Billing of Council Tax and Non-Domestic Rates

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

Council Tax and Non-Domestic Rate annual bills will be issued as soon as is practicable after the Full Council has set the Council Tax for the forthcoming financial year. Non-annual bills will be issued as soon as is practicable after the amount of liability is calculated.

9.2 Payment of Council Tax and Non-Domestic Rates

Payment for Council Tax and Non-Domestic Rates will be due on the earliest date permitted by legislation, subject to alternative arrangements being agreed (such as Direct Debit plans). Where a taxpayer or ratepayer can demonstrate an inability to make payment on the set instalment date, certain authorised Officers will have the discretion to vary the instalment dates; however the final instalment will usually fall due before 31st March of the financial year in question.

9.3 Non-payment of Council Tax and Non-Domestic Rates

For Council Tax, the following demand notices will be issued upon non-payment of an instalment:-

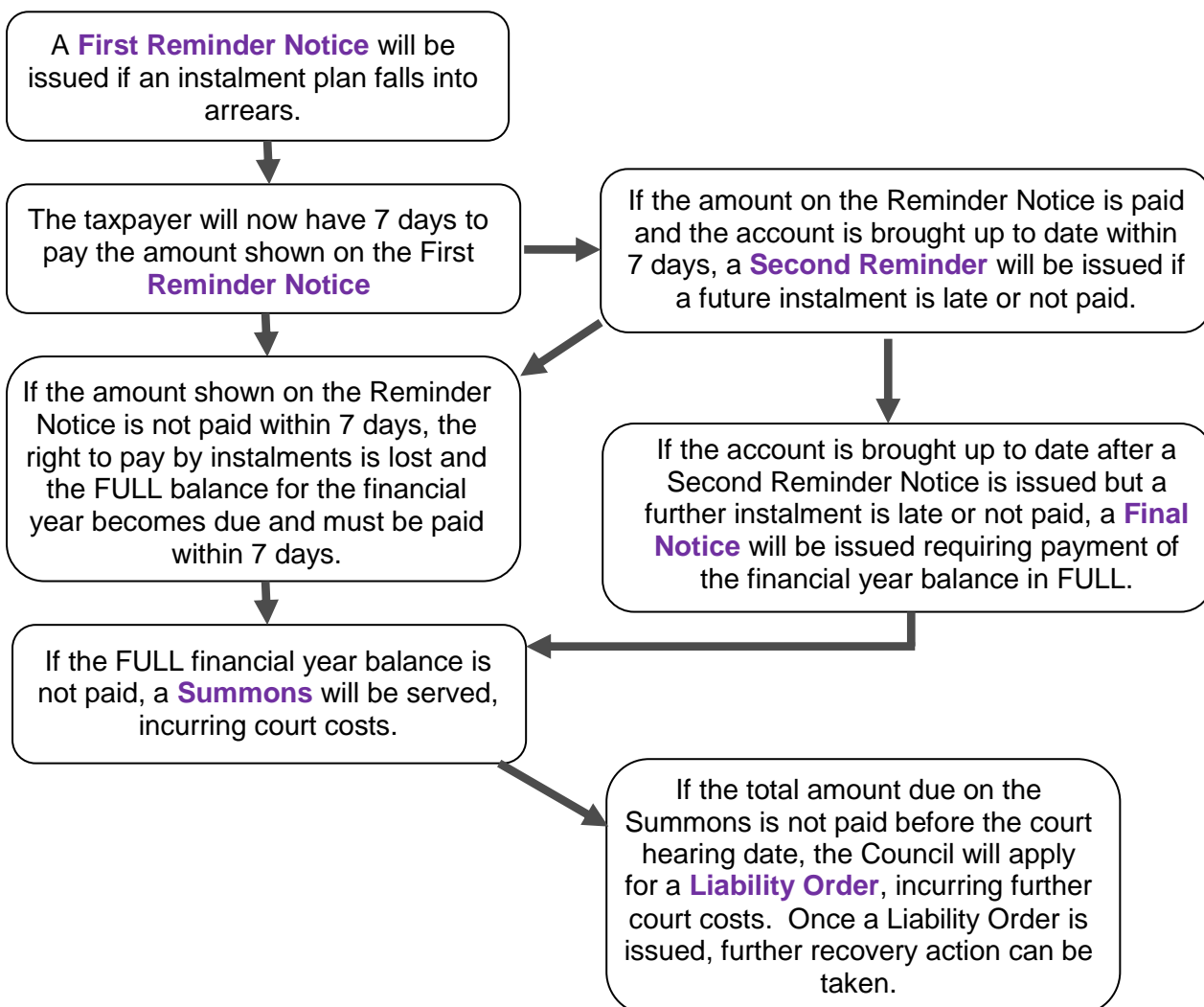
- First Reminder Notice: issued where a Council Tax payer falls into arrears for the first time in a financial year.
- Second Reminder Notice: issued where a Council Tax payer falls into arrears for a second time during the same financial year.
- Final Notice: issued where a Council Tax payer defaults on their instalment plan for a third time during a financial year. At this point, the Council Tax payer will lose the right to pay the remaining year's debt by instalments and the whole amount will become due.

Reminders and final notices will be issued within 14 days of the payment default to which they relate, as far as is operationally practicable and in line with a recovery timetable which will be set at the commencement of each financial year.

Where full payment is not made in accordance with the latest notice sent, a Magistrates' Court Summons will be issued, advising the taxpayer of a hearing date on which the Council will apply to the Magistrates' Court for a Liability Order. The summons will be issued as soon as is reasonably practicable after the default to which they relate has occurred. An additional court cost for the issue of the summons will be added to the debt at this point.

If full settlement of the debt (including summons costs) is not made before the date of the hearing, the Council will apply to the Magistrates to grant a Liability Order. If full settlement is not made, a payment arrangement will generally only be entered into where the debt is secured by a Liability Order and payment by Direct Debit is agreed.

The diagram below gives an overview of the Council Tax recovery process where late or no payment is made against an instalment plan:-



Costs associated with court summonses and Liability Orders will only be withdrawn in exceptional circumstances.

9.4 Recovery Action Following Non-payment

Following the granting of a Liability Order by the Magistrates' Court, the debtor will be given an opportunity to make a reasonable payment arrangement. Arrangements can only be agreed by an Authorised Officer and will usually only be accepted where:-

- The arrangement clears the outstanding debt by the end of the current financial year
- The debtor's offer of payment is reasonable in relation to the amount that could be recovered through alternative means of recovery action
- The debtor demonstrates a clear intention to honour the terms of the agreement
- The debtor provides their contact information and details of their employment, where appropriate.

Should the debtor not make or keep to a payment arrangement the following methods of recovery action(s) can be taken:-

- **Deductions from Benefits** * - deductions will be made from a debtor's Income Support, Jobseeker's Allowance, Employment Support & Allowance or Pension Credit.
- **Attachment to Earnings** * - deductions will be made from a debtor's earnings at the rate set down in legislation.
- **Attachment of Members' Allowance** * - deductions will be made from the Allowances paid to Elected Members.
- **Taking Control of Goods** – Enforcement Agents acting on behalf of the Council will be empowered to take control of goods owned by the debtor and sell them to discharge the debt owed.
- **Insolvency** – the Council can institute bankruptcy or liquidation proceedings. See Insolvency Policy at [Appendix 4](#).
- **Committal to Prison** (individuals only) – The Council may apply to the Magistrates' Court for an order to commit the debtor to prison. See further notes on committal to prison below.
- **Charging Orders** – The Council may apply to the County Court to place a charge on property owned by the debtor where their debt exceeds £1000.00. In some cases, the County Court can force the sale of the charged dwelling.
- **County Court proceedings** – the Council can apply to the County Court as an alternative to the Magistrates' Court.

* Applicable to Council Tax debts only

The method of recovery action used will be dependent on the individual circumstances of each case and will be used in consideration of the principles laid down in section 5.

Committal to Prison – further information

In cases where all other methods of recovery action including enforcement agent referral have been unsuccessful in recovering a Council Tax or Non-Domestic Rate debt, the Council may choose to pursue committal to prison action via the Magistrates' Court against individuals where:-

- The debt outstanding is in excess of £1000.00; and
- The Council or enforcement agents acting on behalf of the Council have been unable to take control of goods belonging to the debtor; and
- The debtor is not a vulnerable person as defined by section 5 of this Policy; and
- Failure to pay is due to the wilful refusal or culpable neglect of the debtor.

Court Costs – further information

The Council Tax (Administration and Enforcement) Regulations 1992 (as amended) and the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended) enable the Council to recover reasonable costs from debtors where appropriate.

The Council will regularly review charges associated with the recovery of debts, including court costs, to ensure they are reasonable, proportionate and correlate to charges made by other Local Authorities for the same type of action. Any increase in costs will be agreed with the Magistrates Court.

Appendix 2

Benefit Overpayment Recovery Policy

10. Introduction

Housing Benefit and Council Tax Benefit (now abolished) or Council Tax Support overpayments are amounts of benefit that have been awarded but to which no entitlement exists. Overpayments can occur for a number of reasons including claimant error, council error errors or official errors made by the Department for Work & Pensions, late notification of changes in circumstances, fraudulent claims or payments made in advance.

11. Policy

11.1 Calculation of Housing and Council Tax Benefit/Support Overpayments

The Council is mindful of the detrimental impact that overpayments of benefit can have on individuals and families already receiving a low income and will endeavour to prevent overpayments from occurring and minimise any overpayments that do occur wherever possible by:-

- Identifying and calculating overpayments promptly – on average, within 14 days of receiving all necessary information
- Inviting and encouraging claimants to apply for underlying entitlements to benefit
- Promptly and accurately determining recoverability of the overpayment.

11.2 Recoverability of Housing and Council Tax Benefit Overpayments

The Council has a statutory duty to protect public funds and will endeavour to collect all recoverable overpayments in full. Authorised Officers may, in appropriate circumstances, make a recommendation to write-off a debt under the Write-Off Policy included at [Appendix 5](#).

Where it is established that an overpayment is recoverable, the Council will decide who the most appropriate party to recover the overpayment from is, depending on the circumstances of each case which may include:-

- The claimant; or
- The claimant's partner, if that partner was living with the claimant at the time that the overpayment was made and at the point that the decision to recover was made; or
- The person who received the benefit payment, e.g. the landlord.

In cases where an overpayment has been caused by a proven fraud, the Council will attempt to recover the debt from the person who misrepresented or failed to disclose a material fact in the first instance. For details regarding the use of Prosecution and Administrative Penalties that may be taken against customers who have committed benefit fraud as well as the action taken on benefits overpaid to customers and landlords refer to the Revenues & Benefits Anti Fraud Policy, Anti-Fraud Strategy and Prosecution Policy.

11.3 Method of Overpayment Recovery

Overpayments of Council Tax Benefit or Council Tax Support (where recoverable) will generally be debited to the Council Tax account of the claimant and will be billed, collected and recovered as a normal Council Tax charge as detailed in the Council Tax & Non-Domestic Rates Recovery Policy at [Appendix 1](#).

The method of recovery for Housing Benefit overpayments (where recoverable) may be by any of the following means:-

- Offsetting against arrears of or underlying entitlement to Housing Benefit
- Deducted from ongoing entitlement to Housing Benefit – this will be at a recovery rate based on DWP guidelines and will be at the maximum rate permissible. An Authorised Officer may alter this rate where demonstrable hardship is proven.
- Deducted from other DWP benefits such as Income Support, Jobseekers' Allowance, Employment & Support Allowance and Pension Credit under Section 75(1) of the Social Security Administration Act 1992.
- By raising an invoice to the benefit debtor
- By deducting from the Housing Benefit received by a landlord or raising an invoice to the landlord
- By referral to an external debt recovery agent
- By application for a County Court Order or Judgement which enables the Council to use additional recovery methods such as an attachment to a debtors earnings, court bailiff recovery or insolvency.
- Deducted from earnings by a Direct Earnings Attachment under the Social Security (Overpayments and Recovery) Regulations 2013.

The method of recovery used will always depend of the circumstances of each case but where the overpayment is recoverable from a claimant, the Council will always attempt to recover from arrears of underlying entitlement or ongoing entitlement to Housing Benefit in the first instance.

11.4 Non-payment of Housing Benefit Overpayment Invoices

For Housing Benefit overpayments where the customer is not in receipt of an ongoing entitlement to benefit, an invoice will be issued requesting payment. The following process will be instigated where payment is not made and a suitable payment arrangement is not agreed:-

- First Reminder Notice – issued 21 days after an invoice has been sent and remains unpaid.
- Final Demand – issued 14 days after First Reminder Notice is issued and remains unpaid.
- Telephone Call – where a telephone number for the debtor can be ascertained, an authorised Officer will attempt to contact the debtor by telephone to agree payment.
- Where the debt remains unpaid or a reasonable arrangement for payment has not been made, the Council will prepare the case for recovery using one of the methods detailed above and a final letter outlining the action to be taken will be issued to the debtor.

Appendix 3

Sales Ledger Debt Recovery Policy

12. Introduction

The Council provides a range of services for which a charge is made, for example for use of leisure facilities or care provision. Generally, payment for these types of services is obtained in advance or at the time of service delivery by the Council business unit who are delivering the service but where payment in advance is inappropriate, a Sales Ledger invoice will be issued.

12.1 Billing of Sales Ledger Debts

Responsibility for Sales Ledger debts is held jointly by the Head of Service for the service area that the makes the charge for service and the Revenues Service. Billing, collection and recovery of the debts is undertaken by the Revenues Team, however the originating service area should also be aware of debts which are outstanding for their area. Any issues, queries and disputes relating to validity of the debt must be raised directly with the originating service area.

The Council will issue an invoice for any charges not collected in advance or at the time of service. The settlement terms for all invoices will be deemed to be 21 days from the date of issue of the invoice, unless terms are altered expressly by contract or an invoice payable by instalments is issued.

12.2 Non-payment of Sales Ledger Debts

The following demands will be issued upon non-payment of a Sales Ledger invoice:-

- Reminder Notice - issued 21 days after the issue date of the invoice.
- Final Notice – issued 14 days after the issue date of the Reminder Notice.
- Telephone Call – where a telephone number for the debtor can be ascertained, an authorized Officer will attempt to contact the debtor by telephone to agree payment.
- Where the debt remains unpaid or a reasonable arrangement for payment has not been made, the Council will prepare the case for further recovery action as detailed below.

Where permitted legally, the Council may suspend the provision of further services to the debtor until the outstanding debt is settled.

12.3 Recovery of Sales Ledger Debts

Where a Sales Ledger debt remains unpaid or a reasonable arrangement cannot be agreed after the stages detailed above, the Council will prepare the case for recovery by applying for a County or High Court Judgment order and a final letter outlining the action to be taken will be issued to the debtor. A Court Judgment order enables the Council to pursue recovery of the debt by a statutory method of enforcement which may include:-

- Deductions from a debtors earnings via an Attachment of Earnings order
- Warrants of execution - allowing a County Court bailiff or High Court Enforcement Officer to take the debtors goods for sale to repay the debt
- Garnishee Orders – allowing the Council to recover outstanding debts from a third party who holds money belonging to the debtor such as from a bank account.
- Insolvency Orders – allowing the Council to institute bankruptcy or liquidation proceedings. See Insolvency Policy at [Appendix 4](#).

- Charging Orders - the Council may apply to place a charge on property owned by the debtor where their debt exceeds £1000. In some cases, the County Court can force the sale of the charged dwelling.
- High Court enforcement action – for debts over £600.
- Debts of current tenants for council rented commercial properties will be sent to an Enforcement Agent for further recovery.

The method of recovery action used will be dependent on the individual circumstances of each case and will be used in consideration of the principles laid down in Section 5.

Appendix 4

Insolvency Policy

13. Introduction

This policy relates to debts owed to the Council for Council Tax, Non-Domestic Rates, Sales Ledger and Housing Benefit overpayments. The purpose of this policy is to ensure that the Council's use of insolvency to recover outstanding debts is appropriate, consistent and compliant with legislation and best practice in every case.

13.1 Legislative Background

The Council Tax (Administration and Enforcement) Regulations 1992 and the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 enable debts for Council Tax and Non-Domestic Rates that are secured by Liability Orders to be pursued for insolvency proceedings under the provisions of the Insolvency Act 1986.

Housing Benefit overpayment and Sales Ledger debts may be pursued through insolvency proceedings where the debt exceeds £750 and a County Court Judgment has been granted in respect of the debt.

13.2 Local Requirements

The Council recognizes that the consequences of insolvency can be severe and result in considerable legal and administrative costs being incurred, so will undertake to thoroughly examine the rationale for commencing insolvency proceedings on a case by case basis using the following guidelines (the list is not exhaustive):-

- The debt exceeds £2000 (or a lower limit of £750 in some circumstances where fraud is involved). The overriding principle will be to ensure action taken is proportional to the level of outstanding debt.
- The debtor is not making regular, mutually agreed payments that are sufficient to clear any accruing debt and arrears within a reasonable timescale
- The debtor appears to have sufficient assets to ensure the debt is recoverable by the Official Receiver or the Trustee in Bankruptcy.
- Other methods of recovery have failed or are not appropriate to the particular debtor
- Insolvency action is likely to elicit payment from the debtor due to their personal circumstances, for example where a bankruptcy order may affect the debtor's employment, professional status or ability to acquire finance.

13.3 Decision Making and Administration

To provide consistency and support the decision making process, a standard Insolvency Action Checklist ([Appendix 4a](#)) will be created at the point that insolvency proceedings start being considered as a potential method of recovery. The checklist will be used to record evidence considered as part of the decision making process and it will be maintained and reviewed throughout the decision making and insolvency processes to ensure that insolvency remains the most appropriate course of action.

By using the standard checklist, the Council will seek to build a complete picture of the debtor including their personal and financial circumstances to assist in the decision making process.

Are insolvency proceedings appropriate?

At the earliest stage of considering insolvency proceedings, an authorised Council Officer will undertake a full interrogation of the Revenues & Benefits computerised systems to:-

- Establish a full debt history for the debtor and identify whether other debts have been successfully collected in a reasonable period by other means.
- Confirm that all entitlements to benefits, discounts and exemptions have been granted on the information currently held.
- Establish whether the debtor may be vulnerable or unable to manage their financial affairs from the information held. Investigations will include information held by external suppliers where appropriate (for example where an external enforcement agent has previously made contact with debtor).

The Council Officer will make contact with the Council's Adult Care service to establish whether the debtor is known to them. If the debtor is currently receiving any Adult Care services (or has been a service user in the past), the Adult Care Access Team will provide contact details for the debtor's Key Worker. An authorised Officer will make contact with the debtor's Key Worker to obtain further details about the debtor.

If it is established that a debtor is vulnerable and unable to manage their own affairs at any stage prior to a bankruptcy order being granted, the Council will strongly consider withdrawing proceedings in favour of an alternative method of enforcement action. The Council is committed to supporting vulnerable individuals and will always seek to find a responsible and sustainable solution to addressing outstanding debt in such cases. Where appropriate, the Council may seek support from other Council service areas or third party agencies in addressing debt with a vulnerable individual.

Will insolvency proceedings assist in recovering the debt and preventing further debt from accruing?

Where no evidence of vulnerability is identified, an authorised Council Officer will under a financial background check to review whether another enforcement method is suitable and whether insolvency proceedings will be successful in either recovering the debt or preventing further debt from accruing. The following checks will be undertaken, although the list is not exhaustive:-

- H.M. Land Registry records will be checked to confirm whether the debtor holds an interest in any property.
- A search with a Credit Reference Agency will be undertaken to gather financial information relating to the debtor.
- Potential business and employment information held internally will be reviewed and checked against Companies House and LocTa Tracing data.

Can insolvency proceedings be avoided?

Before formal insolvency proceedings are instigated, a further attempt will be made to engage with the debtor. An authorised Officer will visit the debtor's home address (or business address if appropriate) to attempt to make arrangements for the debt to be paid. At the visit, the Council Officer will serve a letter on the debtor requesting payment of the debt, advising them that the Council is considering undertaking bankruptcy or liquidation proceedings and urging them to contact the Council by a specific date. A copy of the Insolvency Service publication "[A Guide to Bankruptcy](#)" will be included with the letter. If contact cannot be made with the debtor, the letter will be served on the debtor's home address.

If full payment is not received or a suitable payment arrangement has not been agreed by the date specified in the letter, the case and checklist will be reviewed and an authorised Officer will decide whether there is any reasonable probability of recovery by other means or if not, to instigate insolvency proceedings.

A final letter will be issued to the debtor advising that a Statutory Demand will be issued after 7 days if payment in full is not received. The letter will explain the reason that insolvency proceedings are being commenced and will advise the debtor to seek urgent independent advice from a Citizens Advice Bureau, a solicitor, a qualified accountant, an authorised insolvency practitioner, a reputable financial adviser, or a debt advice centre.

13.4 Undertaking Insolvency Proceedings

In deciding to undertake insolvency action, the Council will undertake the following statutory process as defined by the Insolvency Act 1986. For bankruptcy this will mean:

- **Issue of a Statutory Demand** – the Council will serve a statutory demand on the debtor requiring the debtor to settle the debt within 21 days. The debtor will be invited to contact the Council with the intention of coming to a reasonable arrangement to avoid further insolvency proceedings at this stage.

The Council will submit proof that the statutory demand has been served to the appropriate court and the debtor may apply to have the statutory demand set aside within 21 days of the service of the demand. The Insolvency Service publication "[Statutory Demands](#)" provides further information about this process.

- **Presentation of a Bankruptcy Petition** – where a debtor has not complied with the terms of the statutory notice and reasonable alternative arrangements have not been made, the Council may present a bankruptcy petition to the appropriate court within 4 months of the statutory demand being served.

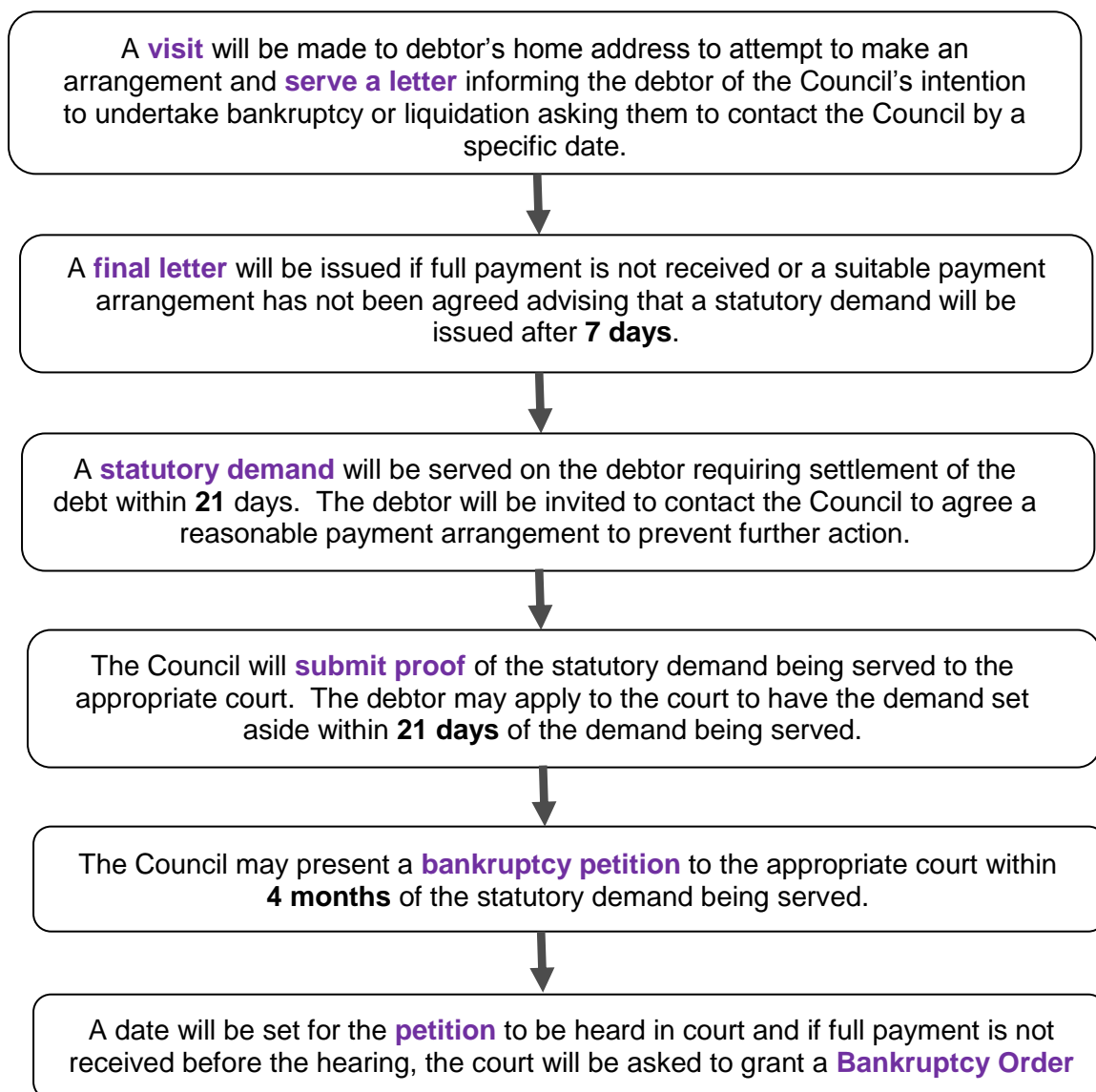
A copy of the petition will be served on the debtor and a date will be set for the petition to be heard in court. If payment in full is not received before the hearing of the petition in court, the Court will be asked to grant a Bankruptcy Order.

Once a bankruptcy order has been made, the Court will appoint:

- An official receiver who is under a duty to investigate the bankrupt's financial affairs and protect the bankrupt's assets; and
- A trustee in bankruptcy who is responsible for selling the bankrupt's assets and distributing any proceeds to creditors.

The insolvency process that applies to companies or partnerships rather than individuals is similar to bankruptcy but seeks to wind-up a company/partnership and liquidate its assets to secure payment to creditors. Detailed information about the winding-up process is available at the [Insolvency Service website](#).

Overview of Insolvency Process



Appendix 4a

Insolvency Referral Checklist

Appendix 5

Write-Off Policy

14. Introduction

This policy relates to debts owed to the Council for Council Tax, Non-Domestic Rates, Sales Ledger (Sundry Debts) and Housing Benefit overpayments. The purpose of this policy is firstly to recognise that where debt is deemed to be irrecoverable, prompt and regular write-off of such debts represents good financial practice and secondly, to ensure that the decision to write-off debts is made in a standard, fair and consistent manner in accordance with documented procedures.

15. Policy

A debt must be deemed to be irrecoverable to be considered for write-off. Whilst not exhaustive, the following is a list of generally acceptable reasons for writing off a debt:

15.1 Legally Excused Debt

Applies **only** to Council Tax and Non-Domestic Rate debts where:-

- The balance (or part of) is remitted by a Magistrate following a committal hearing, having given due regard to the debtors circumstances.
- The debtor has served a custodial sentence for non-payment of the debt and the debt therefore becomes irrecoverable.
- The Magistrates do not issue a committal warrant and do not remit the debt. The Council has no other recovery options open to it and therefore the debt is irrecoverable.

Legally excused debts must be supported by documentation such as proof that the custodial sentence has been served or a form signed by the Magistrate confirming the debt is remitted.

15.2 Small Balances on Closed Council Tax Accounts, Benefit Claims and Sundry Debts

For closed Council Tax accounts, Non-Domestic Rate accounts, Housing Benefit claims and Sundry Debts a small balance will be defined as an amount less than or equal to the level of revenues court costs subsisting at the time of writing off. For financial year 2014/15 the level of the costs are currently set at £80.00 per the Council's constitution.

Council Tax and Non-Domestic Rates Small Balances

A closed account for Council Tax or Non-Domestic Rates is defined as being an account where the liable person no longer resides at the property to which the balance relates.

Small balances for Council Tax or Non-Domestic Rates will receive a bill as a legal requirement. Balances of less than £5.00 will not be sent a formal reminder/final notice but balances of between £5 and the level of revenues court costs subsisting at the time will be.

Value of Balance	Minimum Action before balance can be written off
Less than £5.00	Bill only sent – balances will be reviewed on an annual basis for automated write-off.
Balances between £5.00 and current court cost (£80.00 for 2014/15)	Recovery notices up to and including Final Notice issued.

Housing Benefit Overpayment Small Balances

Closed Housing Benefit claims are defined as being claims where no ongoing entitlement to benefit exists. Where a Housing Benefit claim is closed and any outstanding balance is less than or equal to £10.00, the overpayment will be written off at the point it is created.

Where the balance outstanding is greater than £10.00 but less than the current revenues court costs subsisting at the time of writing off, an invoice, reminder and final notice will be issued. For financial year 2014/15 the level of the costs are currently set at £80.00 per the [Council's constitution](#). If the balance remains unpaid one month following the issue of the final notice, the debt will be reviewed to consider whether it is in the Council and/or public interest to continue to pursue recovery. If not, the debt will be written off.

Sundry Debt Small Balances

For Sundry Debts, where an invoice has been issued and the outstanding balance is less than £5.00, the debt will not progress to reminder stage and will be written off. For debts greater than £5.00 but less than the current revenues court costs subsisting at the time of writing off (£80.00 in financial year 2014/15), they may be considered for write-off once they have completed the recovery cycle and remain unpaid. The exception to this is where there are multiple invoices issued against a single account which together exceed the value of the current revenues court costs subsisting at the time of consideration. These debts will progress to be enforced through legal action and/or collection by an external enforcement/collection agent.

All Small Balances

Small balances should be written off after checks have been completed and recorded on the standard form supplied according to local Revenues procedures.

Where a closed account or claim balance changes, falling below the small balance upper limit and the debt is currently allocated to an enforcement or recovery agent for collection, the debt will remain with the enforcement or recovery agent for collection.

Small balances on closed accounts will not be written off where there is a realistic prospect of recovering the debt, provided that any action taken to recover the debt is proportionate to the total level of debt owed and that it remains within the public interest to recover.

15.3 Current Address of Debtor is unknown (Untraceable)

Where an outstanding debt is in relation to a closed Council Tax, Non-Domestic Rate account or Sundry Debt account or Housing Benefit claim, attempts should be made to establish a current address for the debtor using methods outlined in the team's local tracing procedures. Where these methods are used and fail, the debt should be written off. A tracing check for the debtor will be undertaken one year after the write-off, and if the debtor is successfully traced and their location is in the enforcement area – England and Wales - the debt will be written back on and recovery proceedings re-commenced.

Debts may also be written back onto the system where the whereabouts of the customer become apparent at any point up to 6 years after the debt was created.

15.4 Debtor Deceased

For Council Tax, Non-Domestic Rate, Sundry Debt and Housing Benefit overpayment debts where the outstanding balance is less than the current revenues court costs subsisting at the time of writing off (excluding costs) **and** where there is no joint and several liability **and** the liable party is now deceased, the outstanding debt should be written off.

Where the debt is greater than the current revenues court costs subsisting at the time of writing off (£80.00 in financial year 2014/15) and no joint and several liable party exists, the executors / solicitors of the deceased person should be contacted to establish if any funds are available in the estate to discharge the debt. Where written confirmation is received that the estate has insufficient funds and there is no information to the contrary, the balance should be written off immediately.

For Council Tax and Non-Domestic Rate accounts where joint and several liability exists, recovery of the debt should normally be sought from the surviving jointly liable party.

If a Housing Benefit overpayment is recoverable from the former landlord of the property or benefit is payable to a relative for the same period at the same address, the debt for the deceased party may not be written off in the circumstances outlined above and may instead be recovered from the landlord or relative.

Where attempts to contact the executors or next of kin have failed to illicit a response and appropriate reminders have been issued, the outstanding balance should be written off after a period of 3 months following the latest outgoing communication. If there are reasons to believe that funds do exist in the estate, further attempts to recover the debt can be made following approval from a Team Leader / Group Manager.

Where the debt relates to a Social Care, the Social Care Team should be contacted to establish whether there is any information contained within a previous financial assessment which could be used to pay off the debt before it is written off.

15.5 Balances that have been unsuccessfully pursued by an Enforcement or Collection Agent

For Council Tax, Non-Domestic Rates and Sundry Debts that have been returned by an enforcement agent and where there is no further appropriate recovery action to take, the debt should be written off.

If the debt is a Housing Benefit overpayment, is valued at £100 or more and based on the claimant's circumstances there is a likelihood of being able to recover the debt, a County Court Order/Judgment may be applied for. If this is not the case, the debt will be written off.

Where a debt has been returned from an enforcement agent as untraceable, these cases will already have been through a tri-bureau check at the external recovery company utilising Call Credit, Experian and Equifax. On return of the case, the debt can be recommended for write-off without the need to undertake further local checks.

15.6 Balances where it would not be in the Council's or public interest to take further action

For Council Tax, Non-Domestic Rate, Sundry Debt and Housing Benefit overpayment debts where all appropriate options for recovery have been considered, the extenuating circumstances of the debtor may dictate that further recovery action is not a viable option or may not be in the public interest.

The cost and other resource implications of pursuing a debt will be taken into account and may be used as grounds for writing off the debt where it is considered that the debt is uneconomical to pursue.

15.7 Recovery procedures have been exhausted

In cases where all appropriate debt recovery options have been pursued and have been unsuccessful in recovering the debt, the balance remains unchanged and there is no active communication with the debtor, the debt should be written off.

Where it has been established that the debtor has moved outside of the enforcement area and payments are not being made to reduce the debt, the debt should be written off. A tracing check for the debtor will be undertaken one year after the debt has been written off to identify whether the debtor has returned to the enforcement area. Where the debtor has returned, the debt will be written back on and recovery proceedings will be recommenced.

Additionally, debts may be written back onto the system where it is identified that a debtor has returned to the enforcement area at any point up to 6 years after the debt was created.

15.8 Balances subject to an Administration Order, Individual Voluntary Arrangement or Debt Relief Order

Where a debt becomes subject to an Administration Order, Individual Voluntary Arrangement (IVA) or Debt Relief Order (DRO), the balance on the schedule of creditors should be written off. In the event of a payment being received from the Administrator, court or debtor, this amount should be written back onto the account.

Debts which have not been included in the Administration Order, Individual Voluntary Arrangement or Debt Relief Order may be recovered and/or written off according to normal recovery and write-off procedures.

Where a Housing Benefit overpayment has been deemed to be created as a result of fraud, the debt can continue to be recovered after the discharge of a Debt Relief Order but not after the discharge of an Administration Order or Individual Voluntary Arrangement.

15.9 Individuals subject to Bankruptcy / Insolvency Procedures

In respect of Council Tax, Non-Domestic Rate, non-fraudulent Housing Benefit overpayments and Sundry debts, where the debtor enters into formal insolvency/bankruptcy proceedings, the balance should be written off immediately and a claim sent to the Official Receiver/Trustee in Bankruptcy. It is rare for any payment to be received in insolvency cases but in the event of a dividend being paid, the amount will be written back on to the account.

The Council will undertake an internal check with other relevant internal business units to ensure all debts for the customer are recorded and included before any claim is made to the Official Receiver/Trustee in Bankruptcy.

Where a Housing Benefit overpayment has been deemed to be created as a result of fraud, the debt can continue to be recovered after the bankruptcy has been discharged, using any recovery method.

15.10 Companies subject to Liquidation / Insolvency Procedures, a Company Voluntary Agreement, in Administrative Receivership or otherwise ceasing to trade (with insufficient assets)

Where a company enters into formal insolvency or liquidation and cannot pay its debts (not members' voluntary liquidation), any outstanding balances for Council Tax, Non-Domestic Rates and Sundry debts should be written off immediately and a claim sent to the Official Receiver/Liquidator.

The Council will undertake an internal check with other relevant internal business units to ensure all debts for the company are recorded and included before any claim is made to the Official Receiver/Liquidator.

In the event of a dividend being paid, the balance will be written back on.

If a company enters Administrative Receivership and has outstanding debts for Council Tax and/or Non-Domestic Rates but the Council does not hold a liability order in respect of the debts, the outstanding balances will be written off immediately.

Where a company enters Administrative Receivership and has outstanding debts for Council Tax or Non-Domestic Rates **and** a notice of enforcement has previously been served, the enforcement agent will be instructed to recover any outstanding monies at the earliest opportunity.

For debts relating to Housing Benefit overpayments and Sundry debts, any outstanding balances at the point at which a company enters Administrative Receivership will be written off immediately. Liabilities accrued after the date of Administrative Receivership begins will be sought from the Receiver.

Where a company with insufficient assets to pay its debts ceases to trade but does not enter formal liquidation, it is unlikely that the Council will be able to recover any outstanding balances. The debt should be written off when appropriate attempts to recover the debt have been made and the Companies House register reflects the fact that the company has been dissolved or a proposal to strike off is recorded.

Responsibility for ongoing liability should be identified by investigations with the landlord/owner of the property and in consultation with the Council's Legal Department.

A letter should be issued to Companies House, requesting that the company is removed from the Register of Companies.

15.11 Council Error

An outstanding debt may be written off in cases where there have been multiple errors made by the Council in administering the account or claim. Even in cases where the debtor could have reasonably been expected to realise that errors have occurred (so is legally recoverable) it may still in some instances be appropriate to acknowledge that there has been confusion or inefficiency and agree not to pursue recovery of the debt. A full explanation of the reasons must be attached to each request for write-off.

15.12 Previous Evidence of No Assets and a Genuine Inability to Pay

Where there is current or previous evidence which indicates that there is no realistic prospect of recovering a debt, the balance may be written off at the discretion of the relevant authorized person.

15.13 Out of Time Debts / Old Debts

Where a debt for Council Tax or Non-Domestic Rates is over 6 years old (from the date of the bill issued) and a liability order has not been obtained, the debt will be written off in accordance with the Limitations Act 1980.

For Sundry debts and Housing Benefit overpayments, the debt will be written off where there has been no communication sent to the debtor in the preceding 6 years.

15.14 Charging Orders

Where the Council has secured a charging order against a debtor's property in respect of an outstanding Council Tax, Non-Domestic Rate, Housing Benefit overpayment or Sundry debt, the outstanding debt balance will be written off immediately. The debt balance will be written back onto the account when the property is sold and money from the sale is available to discharge the debt, or when the debtor otherwise makes payment to clear the debt.

15.16 Full & Final Settlements

A full and final settlement is a partial offer of repayment of a customer's outstanding debts. It is made under the condition that the Council agrees to write-off the remainder of the debt. The offer can relate to a single debt owed or against the combined balance of multiple debts.

Council Officers are only permitted to discuss the option of full and final settlement of a debt if it has been suggested or offered by the debtor. The offer must be made in writing and should be supported with an income and expenditure sheet. Only a Revenues or Benefits Group Manager will be authorised to accept or refuse a settlement offer.

The Authorising Officer will compare the offer against the prospects, rate and timescale of recovery of the debt being paid via an instalment arrangement and will only accept a full and final settlement offer if they are satisfied that it offers the best possible return to the Council.

The categories outlined above are intended only as a guide and do not represent an exhaustive list of write-off reasons. There may be other instances where it would be appropriate to write-off the balance of an account. In these cases, a full report explaining the circumstances will be submitted to the Authorising Officer for consideration.

16. Procedure

This policy is written in compliance with the Council's Standing Orders and Financial Regulations as outlined in the Council's constitution.

Council Officers recommending write-off of a particular debt will be responsible for recording the following information on a write-off pro-forma for checking and approval by the Authorised Officer:-

- Customer name
- Write-off category
- Account/Invoice/Claim number
- Period of liability or overpayment period
- Last known address
- Liability address (if different from last known)
- Reason for recommending write-off
- Amount to be written off
- Recovery history
- Details of traces/enquiries carried out
- Report of the appointed Liquidator/Receiver in cases involving insolvency
- Any other relevant information

Section 15.4 of the Council's constitution outlines the levels of authority which must be held by the Authorising Officer as follows:-

“15.4 The Council does not accept the discharge of a debt other than by payment in full other than in respect of write-offs as below:-

What	Who
Value up to the level of Revenues Court costs - £80	Revs & Bens Senior Officer/1 st line Supervisor
Revenues Court Costs to £999.99	Revs & Bens Team Leader/Group Manager
£1,000 to £9,999.99	Revs & Bens Service Delivery Manager
£10,000 to £24,999.99	Assistant Director – Finance Audit & Information Governance
Where the debtor has been declared insolvent or bankrupt and all monies due in dividend has been received or, if the debtor is a company where it has ceased trading or is insolvent.	Chief Financial Officer
A debt of more than £25,000 which is not subject to insolvency or bankruptcy proceedings	Leader/Cabinet