



South Ribble Borough Council Corporate Debt Recovery Policy

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Corporate Debt Recovery Policy

Section 1 - Introduction

1.1 Background and purpose

The purpose of this document is to set out the strategic context for how debts will be recovered and to provide a more detailed policy framework for the efficient collection of all debt types. South Ribble continues to rank highly in terms of the collection of debts such as council tax and business rates and, in the current financial position with an increased focus upon the collection of local taxation and other income types, there is an important need to recover debts both appropriately and efficiently.

1.2 Aims and Objectives

The aims and objectives of this policy are to:

- Maximise income to the Council
- Reduce the overall level of debt
- Address customers debt problems and signpost to other organisations where appropriate
- Maximise people's ability to pay by encouraging the take up of benefits, discounts, exemptions and reliefs
- Take a different approach for those who can't pay and those who won't pay
- Ensure that appropriate and early recovery action is taken and that the debtor's circumstances are taken into account when determining what action should be taken
- Make best use of the Council's resources and improve performance
- To be pro-active in collecting in year balances as well as managing arrears
- Take into account all debts that are owed to the Council when arranging payment plans, and to determine which debts should be prioritised when undertaking recovery action
- To collect tax that is owed while remaining sensitive to the particular issues facing customers receiving Council Tax Support and those who are subject to other welfare reform changes.

1.3 Corporate Links

This Recovery Policy will comply with current regulations and take into account the Council's corporate policies. All complaints will be dealt with in accordance with the Corporate Complaints Procedure.

The policy links with following objectives, actions and measures as outlined in the Council's Corporate Plan priority of being an 'Efficient, Effective and Exceptional Council':

- Deliver value for money in all aspects of the Council's work, through challenging processes, supporting our employees and delivering exceptional customer service.
- Deliver and manage the Welfare Reform Agenda whilst protecting front line services
- Seek to continually improve, ensuring that Council services are fit for purpose and customer focused
- Explore all viable options for income generation and financial savings in order to deliver the Council's efficiency agenda whilst protecting front line services
- Achieve a 98% in year collection rate for council tax
- Achieve a 98% in year collection rate for business rates

This policy also supports the aims and principles contained within South Ribble's Customer Service Charter, and the customer ethos of the Revenues and Benefits departments.

1.4 Partners

Where appropriate, Revenues+ and Gateway staff will signpost customers to other agencies who can provide assistance in effectively managing debts. These advice agencies include Lancashire County Council's Welfare Benefits Service, the Citizens Advice Bureau and National Debtline.

Gateway staff will also offer a Personal Budgeting Support service at the Civic Centre.

1.5 Vulnerability

Prior to undertaking enforcement action the Council will consider each case on its merits and recognise that a different course of action may be required where an individual may be considered as being vulnerable. These actions may include:

- Allowing longer to pay
- Postponing recovery action
- Providing assistance to claim benefits, discounts or other entitlements
- Referring the person to sources of independent advice
- Providing information in an accessible format
- Agreeing to a temporary payment arrangement with a lower repayment level than would normally be agreed
- Other action as appropriate to avoid the vulnerable person being at a disadvantage when compared to a non-vulnerable person.

When assessing whether vulnerability exists the Council will have regard to potential vulnerable situations as outlined by the Ministry of Justice in 'Taking Control of Goods: National Standards', with appropriate use of discretion being essential as guidance cannot cover all scenarios.

A customer may be considered as vulnerable if, for reasons of age, health or disability they are unable to safeguard their personal welfare or the personal welfare of other members of the household.

Some groups who may be considered as vulnerable are listed below. However, this list is not exhaustive and care should be taken to assess each situation on a case by case basis.

- The elderly
- People with a disability
- Vulnerable adults
- The seriously ill
- The recently bereaved
- Single parent families
- Pregnant women
- Unemployed people
- Those who have difficulty in understanding, speaking or reading English.

Section 2 - Council Tax and Business Rates Pre Liability Order Recovery

2.1 Demand Notices

Demand notices will be issued on a daily basis and in accordance with legislation.

The Council will offer an instalment date of the 1st of the month to all non direct debit payers. Direct debit is the most cost effective and efficient method of collecting Council Tax and Business Rates. To encourage customers to pay by direct debit the Council will offer the choice of any instalment date for Council Tax payers, as well as the option of increasing their instalments from ten to twelve months. The Council will offer Council Tax payers the options of weekly, fortnightly and lunar monthly direct debit instalment plans to help customers manage their budgets. Direct payment at Post Offices and PayPoint outlets for cash payers is available using the bar coded bills and the Council will also offer telephone, postal and internet payments options.

2.2 Reminders and Final Notices

Reminders will be issued in accordance with legislative requirements with reminders being issued at least seven days after an instalment has become due. The minimum amount that a reminder will be issued for is £5.00. Customers will be advised to pay their arrears with 7 days of the date of the reminder, otherwise the full amount due for the year will become payable within 14 days of the reminder.

If a Council Tax payer subsequently fails to pay an instalment on time after paying the first overdue instalment, they will receive a second reminder (this does not apply to Business Rate payers).

If, after issuing a first or second reminder, the amount due remains unpaid, the Council will issue a final reminder stating that the full amount due for the year is payable within 7 days.

If a Council Tax payer subsequently fails to pay a third instalment (in the same financial year) on time, or a second instalment for a Business Rate payer, they will receive a final reminder. This final reminder will inform the customer that they have lost the right to pay by instalments and require payment of the full amount due for the year within 7 days. However, instalments will be re-instated where a customer contacts the Council and agrees an acceptable payment arrangement.

All reminder notices will contain details of the potential for a summons to be issued if the amount is not paid. The notices will also provide details of the various payment methods, how to apply for Council Tax Support and how to obtain debt advice.

2.3 Arrangements

Staff will endeavour to negotiate the most appropriate payment arrangement given the customer's circumstances.

Arrangements should be made for all outstanding balances over all debt types where this is possible, with one arrangement being made for the whole balance rather than separate arrangements for each balance outstanding.

A long term arrangement will not be made for an amount which equates to less than the current monthly instalment. Long term arrangements with small instalment values should only be made on closed accounts or where no on-going liability exists, for example for charge payers who have left the area.

Temporary holds on arrangements can be made for short periods only and only in the following circumstances.

- a) The customer is in receipt of welfare benefit and is waiting for a benefit claim to be processed. These holds should be for no longer than 4 weeks.
- b) A signed undertaking has been received from a solicitor proposing payment in full from the proceeds of the sale of property.
- c) Where action has been taken to recover other outstanding balances at a high rate, for example where an attachment of earnings order is in force and the level of deduction is causing hardship.

Where there is previous enforcement history, employment details will be obtained when making arrangements with customers including the name of the employer, workplace address, payroll address if different and pay reference or employment number.

If a final arrangement is being made the customer will be informed of this and the Capita system will be noted accordingly.

Payment arrangements will be considered at any time during the recovery process with a view to achieving full payment within a realistic timescale.

Arrangements will be monitored on an ongoing basis, with defaulters being contacted by post or by telephone to ascertain why they have failed to maintain the agreement and to ensure that they comply with the agreement in future.

Attachment of earnings orders will not usually be recalled from employers. Where this is the case, customers will be requested to supply detailed income and expenditure information in writing prior to an attachment being requested back from an employer. The attachment will remain in force until this is received and a decision made.

2.4 Summons and Liability Orders

A summons is issued by the Magistrates Court for non-payment of Council Tax and Business Rates. The purpose of the summons is to prove the outstanding amount and establish liability for the outstanding balance. A summons will always be issued at least 14 days before the liability order hearing date. Details of valid defences against the issuing of a liability order and details of where to obtain debt, welfare benefit and legal advice will be provided to customers at the same time as the summons is issued.

Summonses will not be issued for less than £50.00. The costs for the issuing of the summons and liability order will be requested by the Council at the court hearing and the amounts requested will be subject to an annual review.

Summonses will encourage the customer to make payment in full prior to the hearing date or, alternatively, to contact the Council beforehand to agree a payment arrangement. The summons will be withdrawn when the customer pays their account in full (including the summons costs) prior to the liability order hearing. The Council will continue to seek a liability order when a customer has made an arrangement to pay the account after the summons was issued, but before the liability order hearing date. This is to ensure that recovery proceedings can commence immediately if the arrangement is not maintained.

The liability order hearing will be held in the Magistrates Court at the time and date stated on the summons. The person representing the authority at the hearing will be a duly authorised person. The Magistrates must grant a liability order if liability for Council Tax or Business Rates is proven.

Section 3 - Council Tax and Business Rates Post Liability Order Recovery

3.1 Introduction

The liability order enables South Ribble Borough Council to take further steps by way of enforcement.

The various remedies are:

- a) Attachment of benefits (Council Tax only)
- b) Attachment of earnings (Council Tax only)
- c) Attachment of Members' Allowances (Council Tax only)
- d) Application for a charging order (Council Tax only)
- e) Insolvency
- f) Referral to an enforcement agent to Take Control of Goods
- g) Committal to prison (this can only be attempted if the Council has already attempted to Take Control of Goods)

With the exception of committal proceedings, where an attempt to Take Control of Goods must already have taken place, the Council may resort to these remedies in any order although it may not pursue more than one option at any time in respect of an individual liability order. Where the Council has requested an Attachment of Benefits on a liability order no recovery action may then be undertaken on any other liability orders in respect of that customer.

3.2 Request for further information

On obtaining the liability order the Council will write to customers to advise that a liability order has been obtained and that the debt may be passed to an enforcement agent if payment is not received or a suitable arrangement is not agreed. The letter will include details of the statutory costs that the customer will incur if the debt is passed to an enforcement agent. The customer will also be required to complete and return a form detailing their income, which will be used to ascertain the most appropriate method of recovery. This form must be completed and returned to the Council within 14 days, or the Council may commence criminal proceedings against the customer if they fail to do so. The penalty for failing to complete the form is a fine of up to £500, with a fine of up to £1,000 for supplying false information. The Recovery Team Leader will, in consultation with the Revenues+ Manager, authorise the prosecution of a customer for failing to supply information or providing false information.

In respect of Business Rates the Council will write to customers to advise that a liability order has been obtained and that the debt may be passed to an enforcement agent if payment is not received or a suitable arrangement is not agreed. The letter will include details of the statutory costs that the customer will incur if the debt is passed to an enforcement agent.

3.3 Attachment of Benefits

Where a liability order is made in respect of a person who is receiving Income Support, Job Seekers Allowance (Income based), Universal Credit or Employment Support Allowance, the Council will apply to the Department for Work and Pensions (DWP) for a deduction to be made from benefit. This will be the preferred post liability order recovery option for those working age claimants in receipt of Council Tax Support.

This method is most effective where arrears levels are not too high as the amount of Income Support Personal Allowance that can be deducted is fixed at 5%.

Payments of deductions from benefits are made to the Council every four weeks.

3.4 Attachment of Earnings

Where a liability order has been made, the Council can secure payment by way of an attachment of earnings order. A maximum of two orders can be in place for each liable party and the employer will apply the orders in date order.

When deciding on an attachment of earnings order, consideration should be given to the rate of deductions, whether they are sufficient to clear the debt and how regular the employment is.

3.5 Attachment of Allowances

The regulations allow an attachment of the allowances of an elected council member to be made when the billing authority has obtained a liability order.

Any decision regarding an attachment of allowances should be referred to the Revenues+ Manager before action.

3.6 Enforcement – Taking Control of Goods

Where the amount outstanding in respect of a liability order is £100 or above and there is no suitable alternative method of recovery, the Council will refer the debt to an external Enforcement Agency for collection in accordance with the Tribunal, Courts and Enforcement Act 2007. Before passing the case to the Enforcement Agency the account will be checked to ensure that it is appropriate for the case to be referred.

The Council will enter into Service Level Agreements with the Enforcement Agencies which will detail the Council's requirements at the various stages of the Taking Control of Goods process. Performance against these agreements will be monitored at regular meetings with the enforcement agents.

3.7 Request for Interview

Once the above recovery actions have been considered debtors owing over £1,000, are to be invited to Gateway for an interview with a court officer. The minimum arrears figure of £1,000 may be reduced where it is felt that a personal interview will assist in debt recovery. The purpose of the interview is to explain that the next step is to apply for the customer's commitment to prison, insolvency or a charging order. The court officer will explain the costs and implications involved in undertaking any of these options and will attempt to negotiate a mutually acceptable payment agreement to pay the arrears.

3.8 Telephone Debt recovery

At all stages during the above process attempts will be made to contact the debtor directly by telephone and to explain the situation with a view to agreeing a payment arrangement to pay the amount outstanding.

3.9 Committal to Prison

Where the Council has been unable to take control of goods, the debtor is not known to have assets and the debt exceeds £1,000, then committal action will be considered.

This action is costly and care must be taken to allocate appropriate cases for committal with the success of the action being closely monitored. Suitable cases for committal will be identified by the Recovery Team Leader in consultation with the Revenues+ Manager. Consideration will be given to the individual nature of each case, taking into account whether a debtor may be classed as vulnerable with reasonable checks being made to establish any vulnerability issues, and the potential for the Council to recover any costs incurred. Committal summonses will be hand delivered or sent by recorded delivery.

The Council will incur significant disbursements and administration costs associated with committal proceedings. As a result, the court officer will request the maximum of amount of costs from the court as permitted by the Amendment of the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and Council Tax (Administration and Enforcement) Regulations 1992(b) in each case.

Cases where the customer pays in full between the date the committal summons was issued and the date of the hearing will have costs applied to the account. The costs will equate to the maximum amount permitted by legislation detailed above.

The court will consider if non-payment resulted from 'wilful refusal' or 'culpable neglect' and whether a prison sentence is appropriate. The maximum prison sentence is three months.

If a taxpayer fails to attend the committal hearing the Council will apply for a warrant for their arrest. Initially a warrant with bail will be applied for. If the taxpayer still fails to attend court a warrant without bail will be applied for. In these cases costs up to the maximum allowed by the legislation detailed above will be applied for from the court.

3.10 Charging Orders

After a liability order has been obtained, the Council may apply to the County Court for a charging order against the council taxpayer's property. The order gives the Council an equitable charge on the property so that if it is sold the Council is automatically entitled to receive the outstanding amount from the proceeds of the sale, providing there is sufficient equity remaining when any higher ranking charges, for example mortgages, have been redeemed.

Where a debt is over £2,000 and the amount of identified available equity is over £10,000 a charging order should be considered along with committal to prison and insolvency action. In cases where a sale is imminent the amount of debt outstanding should be above £1,000. When considering the option of a charging order the following should be taken into account:

- Whether there are other beneficial owners
- Whether there are other higher ranking charges
- The current realistic valuation of the property
- Full consideration should be given to arrangements, which should not exceed two years
- The charging order should be renewed every three years if the property has not been sold
- With the exception of imminent sales, the debtor is to be invited to attend an interview to inform the customer of the nature of a charging order.
- Charging orders are only to be applied for in respect of the property upon which the liability order was obtained.

The Recovery Team Leader in consultation with the Revenues+ Manager will identify cases which are suitable for a charging order application.

Following the granting of the charging order by the county court, an order for sale can be obtained. Orders for sale must be agreed by the Recovery Team Leader in consultation with the Revenues+ Manager and will normally only be approved where the property is unoccupied, it has not been possible to make a suitable arrangement and the debt is over £3,000.

3.11 Insolvency

A council authority can instigate insolvency proceedings if a debtor owes more than £5,000. The action is taken by presenting a petition to the County Court for an individual's bankruptcy or by instigating proceedings for a company to enter a compulsory liquidation (winding up).

For South Ribble Borough Council, insolvency action is to be considered in the following circumstances:

- The debt is over £5,000

- There appears to be sufficient equity available to meeting the costs of bankruptcy proceedings and pay the outstanding amount. This may not apply to a compulsory liquidation where there is a requirement to prevent a debt from accruing on an annual basis as charges are applied.
- A sale of any property does not appear to be imminent.
- The debtor is not classed as vulnerable with reasonable checks being made to establish any vulnerability issues.
- The debtor resides in the UK or the company is registered in the UK.
- A Letter Before Action will be sent to the debtor prior to the commencement of proceedings to outline both the costs and consequences of insolvency.
- All liability and benefit issues are to have been settled prior to the hearing taking place.

The Recovery Team Leader in consultation with the Revenues+ Manager will identify cases which are suitable for insolvency proceedings.

Section 4 – Housing Benefit Overpayments

4.1 Invoicing

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

Where the Council decides an overpayment is recoverable, recovery arrangements will commence as follows:

- From arrears of housing benefit.
- From on-going housing benefit. The Council will base recovery rates on DWP guidelines and will initially apply the maximum recovery rate permissible. However officers will be empowered to consider applications from debtors to reduce the recovery rate where applying the maximum rate is causing demonstrable hardship.
- The Social Security Administration Act 1992 provides for the Council to recover overpayments from landlords from their current tenants' entitlement. The Council will, in appropriate circumstances, reduce payments to landlords for their current tenants to recover overpayments that arose for former tenants. It will take this action when the original tenant has no continuing Housing Benefit and when there was a misrepresentation or failure to disclose a material fact.

An invoice will be issued if there is no continuing entitlement to housing benefit. Invoices will require immediate payment of the full amount due, although the Council will enter into suitable payment arrangements.

In the absence of a full payment or a payment arrangement, a final notice will be issued 35 days after the date of the original invoice. This is to allow the debtor sufficient time to appeal against the overpayment.

4.2 Unpaid Invoices

If payment of the amount due is not made or an arrangement is not entered into within 14 days of the final notice the council will consider the following methods of collection of the amount due:

- Direct earnings attachment
- Attachment to prescribed DWP benefits
- Deduction from entitlement to housing benefit at another local authority
- Referral to a debt collection agency.

Where a claimant has an outstanding housing benefit overpayment invoice and they subsequently re-qualify for benefit, in normal circumstances the outstanding invoice balance will be returned to the benefits system for collection from ongoing benefit entitlement.

Invoices that are outstanding and where it has not been possible to collect the debt will be checked at regular intervals for changes in the circumstances of the debtor which may enable recovery to re-commence.

Debts that remain unpaid may be passed to the Legal Department for recovery action. This may include contacting the debtor, followed by enforcement action using one of the available methods:

- Debtor to Attend Court for Questioning
- Bailiff Warrant
- Charging Order
- Garnishee Order
- Insolvency Proceedings

In deciding whether to commence insolvency proceedings or to apply for a charging order the Council will base any decision upon the criteria outlined in Section 3 of this policy relating to the post liability order recovery of Council Tax and Business Rates debts.

The Council will consider entering into a payment arrangement at all times during the recovery process where it is appropriate to do so and will result in the debt being recovered within a reasonable timeframe.

Section 5 – Sundry Debtors

5.1 Invoicing

Periodic invoices will be issued 14 days before payment is due with a reminder notice being issued 14 days after the due date. After a further 14 days the Council will undertake intervention action which may include checking internal systems, emailing or telephoning the debtor, and passing the case to an external debt collection agency.

Invoices raised by Property Services in relation to commercial rents may be collected by an instalment plan. These plans will be monitored with interventions being undertaken if an instalment is not paid on time. If the amount due remains unpaid the Council may instruct Enforcement Agents to undertake commercial rent arrears recovery in accordance with the Tribunals, Courts and Enforcement Act 2007.

Non periodic invoices will be due immediately upon issue of the invoice with a reminder notice being issued 14 days later. After a further 14 days the Council will undertake intervention action which may include checking internal systems, emailing or telephoning the debtor, and passing the case to an external debt collection agency.

Alternative methods of recovery routes or enforcement may be used for specific debt types where legislation prescribes specific routes or options. Examples of these methods include the suspension of a licence when a premises licence has not been paid or where payments are due in accordance with the Community Infrastructure Levy Regulations.

5.2 Unpaid Invoices

Debts that remain unpaid may be passed to the Legal Department for recovery action. This may include contacting the debtor followed by the commencement of legal proceedings to obtain judgement. The judgement may then be enforced by using one of the available methods:

- Debtor to Attend Court for Questioning
- Bailiff Warrant
- Attachment of Earnings Order
- Charging Order
- Garnishee Order
- Insolvency Proceedings

The Council will consider entering into a payment arrangement at all times during the recovery process where it is appropriate to do so and will result in the debt being recovered within a reasonable timeframe.