



# **CORPORATE DEBT RECOVERY AND MANAGEMENT POLICY**

**November 2008**

**We will issue bills promptly and correctly. Where recovery action is required, we will act quickly, consistently, fairly and impartially.**

**We will treat people with respect.**

**We will ensure that any relevant benefits, discounts, reliefs and exemptions are taken up to reduce amounts payable.**

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## Introduction

This Policy has been developed to help the Council meet its vision of:

***‘making South Derbyshire a more prosperous place to live ..... by offering value for money services’***

Particularly, it provides a framework for service delivery that recognises debt occurs for a variety of reasons; in some cases there may be a deliberate intention not to pay and in others non-payment may be as a result of an oversight or a change in personal circumstances.

The framework also facilitates the move towards a Performance Management operating model that fully supports the Council’s Corporate Plan and which provides a methodology for generating information that can be used to drive continuous improvements and ensure excellence in Customer Services.

The Policy is set out as below:

1. Overview
2. Underlying Principles of the Policy
3. The Policy

It sets out the way in which the Council intends to collect monies due to it from both individuals and businesses.

Application of the Policy will be monitored by the Head of Customer Services and will be subject to periodic scrutiny and review.

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### 1 Overview

- 1.1 Sums due to the Council will either be statutory, as in the case of Council Tax, or be non-statutory charges for services following a request to the Council for provision thereof. Our collection and enforcement practices take account of this diversity and are structured to recognise the differing approaches to ensure that the Council is paid in full, on time and, as far as possible, every time.
- 1.2 It is inevitable that from time to time we will be required to pursue recovery, of arrears, from persons and or businesses experiencing genuine difficulty in making payment. An agreed and transparent policy of how the Council manages and collects debts is considered a key element in ensuring consistency, sensitivity and best practice in such situations.
- 1.3 This Policy sets out the general principles to be applied in relation to debt recovery and management across all services, with the exception of Housing Rents. It is designed to be used alongside operational policies that cover activity prior to the recovery and enforcement of debts. It is intended to provide a framework for action not the detail.
- 1.4 The Policy covers the following debts owed to the Council, specifically:
  - Council Tax
  - Benefit overpayments
  - Business Rates
  - General debtors, e.g. unpaid commercial rents and fees and charges
- 1.5 The Policy sets out the general principles and standards in relation to contact arrangements with us, the recovery processes and procedures that may be used, general guidelines on payments and arrangements, and the rules within which enforcement and other agents act on our behalf.
- 1.6 Integral to the Policy is the provision of support mechanisms such as welfare and housing benefit advice, including signposting to partner organisations that are available, as required, to all customers. Our approach, to collecting debt in South Derbyshire is one that provides clear and unequivocal advice and practical help.

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### **2 Underlying Principles**

- 2.1 Every bill and demand for payment (bill), statutory or otherwise, issued will be correctly addressed to the correct legal entity e.g. person(s), partnership, limited company etc. liable to pay and delivered to the last known address and in the case of a company additionally to its Registered Office. Where appropriate, the principles of joint and several liability will be invoked, particularly in relation to local taxation matters.
- 2.2 Each bill will be based on the latest information available to the Council, processed with 10 working days of receipt of that information and issued, wherever possible, on the day of production or as soon as possible thereafter.
- 2.3 All relevant information relating to a bill will be kept either in paper or scanned image format until at least six years after it is first issued. If at the end of that six-year period the bill remains unpaid, the supporting documentation will be retained until either final settlement or write-off of the debt.
- 2.4 The Council will use the most effective method of debt recovery, appropriate to each case, in order to maximise income.
- 2.5 The Council will encourage the most cost effective payment methods with the emphasis being on electronic methods such as direct debit and Internet payment. However, the Council recognises that the nature of its community means that in some cases payment by cash will remain the preferred option for some of its customers.
- 2.6 The Council will keep under constant review advances in technology that may facilitate/improve or reduce the cost of the prompt payment of sums due to the Council
- 2.7 In the interest of economy and where appropriate all bills, reminders and final notices will be issued by 2<sup>nd</sup> class post, and bundled in such a manner as to attract the most advantageous postal discount rate that may be available, unless contrary to regulations or other statutory or legal requirements. At the discretion of the line manager and budget holder some documents may be issued by First Class post if there is a compelling business case for doing so.
- 2.8 Equality and related considerations will be taken into account in accordance with the Councils Equalities and Fairness Policy, current at the time of dealing with each case. Specifically staff seeking to recover debts will:
- ensure information is accessible through translations, larger print versions or sign language, as appropriate to the needs of the debtor
  - arrange for home visits where individuals are unable to access advice services
- 2.9 Where the potential for a statutory benefit or discount exists efforts will be made to make the debtor aware of such opportunities and they will be assisted and encouraged to apply for these. Where an award of such, under the jurisdiction of

the Council, may be granted without further evidence it is to be processed without further delay to reduce indebtedness to the Authority.

- 2.10 This Policy will be supported by, and provides support, to any Policies connected with social and financial inclusion.
- 2.11 All notices issued by the Council will comply with the corporate style guidance and be readily identifiable as being from the Council and will provide clear information on how, where and when to pay and what will happen if payment is not made on time.
- 2.12 Where either national or local performance indicators exist the Council will strive to be the best in class and publish our actual performance against these targets quarterly, including reporting to the appropriate Committee. Progress reports will be monitored monthly.
- 2.13 The Council will work alongside welfare and advice agencies in dealing with debts due to the Council (either singly or as part of a multiple debt scenario that may include other organisations) and actively signpost, with the debtor's approval, such cases as are considered appropriate to those organisations.
- 2.14 In the case of multiple debts due to the Authority the staff within the Debt Recovery and Management Team will coordinate recovery activity and balance repayment profiles across all debts due to the Council.
- 2.15 The Council recognises that prompt recovery action is key in managing its debt and maximising income. The Council therefore will:
  - Regularly monitor the level and age of debt.
  - Set clear targets for the recovery of debt.
  - Have clear written recovery procedures.
  - Have in place regular and formal reviews with partners and agents
  - Set priorities for specific areas of debt and assess recovery methods to ensure maximum efficiency and recovery levels.
  - Regularly review irrecoverable debts for write-off in accordance with the Constitution
- 2.16 All accounts that are considered and subsequently approved as being irrecoverable will be written off against the income code against which they were first raised. This will help to promote the accuracy of bills and contact arrangements at the time the bill is initially created. Where possible the VAT on written-off sundry debt accounts will be recovered by the Authority in accordance with the rules and procedures laid down by HM Revenue and Customs.
- 2.17 Where an external agency provides assistance with the delivery of a service it shall be supported by a Service Level Agreement that will include escalation processes in the event of no or poor service delivery. The flow of information between the Council and the agency shall in all cases and at all times be in a secure electronic format as prescribed, from time to time, by the Head Of Information Technology, be in accordance with the Data Protection Acts.

- 2.18 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. In exceptional cases, where it would not be in the public interest to pursue residual costs/fees only following settlement of the original debt will they be waived.

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### 3 The Policy

#### General

- 3.1 The Council will adopt the following three principles, considered to be best practice in enforcement activity, namely that at all times our actions will be :
- proportional
  - consistent, and
  - transparent
- 3.2 We will be firm and fair and treat our Customers with respect.
- 3.3 We will look to strike a balance between the potential loss of income to the Council and the costs of compliance. We will not unduly penalise late payers. Such costs as are charged will be the actual cost of the activity concerned.
- 3.4 It is our intention to take a similar approach in cases with similar circumstances to achieve similar ends. We will aim to achieve consistency in the:
- advice we give
  - use of our powers
  - recovery procedures used
- 3.5 We recognise that consistency does not mean uniformity and that our staff must take account of all relevant factors, when dealing with individual cases, such as the:
- family and social circumstances of the debtor,.
  - payment history.
  - income and ability to pay
  - health and age
- 3.6 Transparency will help form public perception and confidence by helping individuals and the wider community to understand what their responsibilities are, and what they, in return, should expect from the Council.
- 3.7 The reasons for any action we take will be explained clearly, without jargon and to *Plain English* standards and will include the appropriate timescales. Such information may be given in writing or verbally and will be published on the Council's website and issued with recovery and enforcement notices.
- 3.8 Braille or translation services will be used when considered necessary.
- 3.9 Where a discretion power is exercised an explanation as to the reason for the decision will be given, as will the rights of appeal that are available either to the Council or an external agency or tribunal.



## Local Taxation

- 3.10 Council tax and Non-domestic Rate annual bills will be issued as soon as practical after the Council has set its Council Tax to ensure that the first instalment for both falls due on 1 April in the forthcoming year
- 3.11 Ongoing bills will be issued throughout the year within 10 working days of receipt of the information requiring that bill. Instalments will fall due as required by legislation, the Direct Debit Operational Manual and on a payment date selected by the payer. In the absence of such a selection the default shall be day 1 of the month
- 3.12 Instalment arrangements other than those offered by the Council will be considered as non –statutory. In any event, the last payment date of any instalment scheme shall be the 25<sup>th</sup> of March of the year in which the request is made, although in the majority of cases 25 January shall be considered the operational norm.
- 3.13 The Council's preferred method of payment is Direct Debit and this will be encouraged whenever possible and may include, from time to time, specific campaigns aimed at increasing take-up. However, where a Direct Debit is returned unpaid by a bank on more than one occasion the arrangement shall be cancelled and alternative arrangements agreed.
- 3.14 A recovery timetable will be drawn up and published by 31 October in each year for the following 12 months. This will include dates agreed with the Court for applications to heard for liability orders and will also set out the date of each recovery run. No recovery action set out in the timetable may be cancelled without the prior approval of the Head of Customer Services. Additional activity may be added if necessary.
- 3.15 Instalment both statutory and non statutory will be considered overdue if not paid with 7days of the due date and reminder and final notices issued accordingly. Payments received will be allocated, unless nominated, firstly to costs and then to oldest debts in order of priority.
- 3.16 Summonses will be issued as soon as reasonably practicable after the default to which they relate and applications for a Liability Orders made to the next available Court. The Council's costs of such action will be agreed periodically with the Court and recharged to the defaulting rate or tax payer at the time the summons is issued.
- 3.17 All appropriate methods of enforcement of Liability Orders will be available for use. These include:
- Insolvency
  - Court proceedings
  - Distress (Bailiff action)
  - Committal to prison application (individuals 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
- 3.18 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 debt. Arrangements will only be agreed by staff in the Debt Recovery and Management Team. The overriding guidelines are that the:
- debt will be cleared within the financial year
  - arrangement is reasonable in comparison with the amounts that could be secured by taking alternative action
  - debtor demonstrates a clear intention to honour the arrangement
  - arrangement is based on the debtor's ability to pay
- 3.19 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 staff in the Debt Recovery and management Team prior to a liability order being obtained and without the debtor agreeing to make payment by way of direct debit.
- 3.20 Following the grant of a Liability Order identified cases shall be passed to the Councils enforcement agent(s) within 24 hours of the Court Hearing. Thereafter, progress shall be monitored in accordance with the Service Level Agreement and formally reviewed monthly.
- 3.21 Payments made to enforcements agents shall be held in a clearly identified Client Account and be remitted to the Council every 2 weeks by BACS and be subject to Audit by the Council.
- 3.22 Enforcement agents and Council staff shall comply with the then current advice available from the Lord Chancellor's Department.

### **Benefit Overpayments**

3. 23 The Council's primary concern will be to minimise the number of overpayments that arise by the following means:
- using a well designed application form to collect accurate information and which clearly tells claimants that failure to provide correct information could lead to an overpayment of benefit (and possibly prosecution)
  - ensuring all benefit notification letters and relevant correspondence set out clearly the requirement to tell the Council of any change of circumstances that may affect their claim.
  - designing and publishing effective publicity material.
  - providing regular awareness training for staff with regular contact with claimants

- using information technology to automate the identification and recovery of overpayments and to reduce error
  - having procedures are in place for the prompt ending of benefit claims where it is identified that an overpayment is likely to occur
  - dealing quickly with reported changes of circumstances
  - participating in various data matching exercises with external agencies and cross matching to identify discrepancies in information provided whilst adhering to principles laid down by the Data Protection and Human Rights Acts
- 3.24 The Council aims to calculate overpayments quickly and accurately and to provide quality information to the people affected, ensuring it recovers the correct amount. To achieve this we will:
- invite claimants to apply for underlying entitlement
  - calculate the overpayment within the local performance target set
  - take into account un-presented or returned cheques and any underpayment of benefit.
- 3.25 Where the Council decides an overpayment is recoverable, recovery will be sought by one of the following methods according to the individual circumstances of each case:
- From unpaid Housing Benefit.
  - From ongoing Housing Benefit. The Council will base recovery rates on DWP guidelines and will always initially apply the maximum recovery rate permissible.
  - By debit to the Council Tax account.
  - By raising an invoice, if there is no continuing Housing Benefit and no likelihood of continuing benefit or reduction by underlying entitlement, an invoice will be raised, within 3 days of the benefit assessment, together with an explanation of how the overpayment has arisen in accordance with legislation current at the time.
  - We will always seek to recover the overpayment in full with 14 days of issue of the bill. However, where this is not possible, due to the debtor's personal and/or financial circumstances an instalment plan may be agreed.
  - By deductions from other Social Security Benefits managed by the Department of Work and Pensions.

- By offsetting against any credit balance properly due to an individual on the Council Tax, Business Rates or Rent account

3.27 Where a sundry debt account has been raised and payment is not received after the issue of a final notice, the Council will issue a claim against the debtor in the County Court with a view to obtaining immediate payment or failing which, to enter judgment against the debtor.

### **Sundry Debtors**

3.28 Service departments will endeavour to obtain payment in advance or at the time of service delivery wherever permissible. Sundry debt accounts will only be raised where payment in advance for a service is inappropriate.

3.29 The minimum value of bills will be determined annually by the Head of Finance and Property Services. However such a minimum value shall not apply to accounts relating to legal charges for rights of access or drainage charges where a contractual obligation exists to make such token payments.

3.30 Except in the case of a demand payable by instalments or as otherwise contractually agreed, the settlement terms for all demands will be 28 days.

3.31 Recovery action will generally commence no later than 14 days after the demand has fallen due. Recovery action 'profiles' are to be agreed between the Debt Recovery and Management Team and the account raising section. These profiles will include pre-agreed determinations, as to when to instigate litigation and any other invention considered necessary.

3.32 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.

3.33 All statutory methods of enforcement of debts shall be available for use. These include:

- Order to Obtain Information
- Third Party Debt Order
- Attachments of Earnings
- Warrant of Execution
- Charging Order
- Insolvency proceedings

3.34 Prior to statutory methods of enforcement being taken, the Debt Recovery and Management Team may use, where cost effective to do so and as previously agreed with the relevant Department, external collection agents, visits to the debtor's home and telephone debt chasing as alternative means of recovering debts.

3.35 The originating Department may agree that the threat of withdrawal/suspension of future services to the debtor, until all outstanding debts are settled, may be used as a means to generate payment. However, the final decision to withdraw a

service will always rest with the member of staff in the Department with the authority to make that decision.

- 3.36 Ownership of the value of all sundry debts rests with the originating Departments which shall be responsible for dealing with any queries in connection with the service provided and will notify the Debt Recovery and Management Team of any amendment to, or cancellation of, to the value of the debt. In all cases this will be supported by a credit note to the equivalent value to the Head of Finance and Property Services. However, the originating Department shall not have authority to enter into any arrangement for payment of a debt or withdrawal of recovery action once such activity has commenced.
- 3.37 The Debt Recovery and Management Team shall provide monthly reports on recovery activity to originating departments.
- 3.38 Any disbursements incurred together with bad debts shall be recharged to the originating Department.
- 3.39 Enforcement agents and Council staff shall comply with relevant advice from the Lord Chancellor's Department that is, at any time, currently in force.

### **Write Offs**

- 3.40 The Council recognise that where a debt is irrecoverable, prompt and regular write off of such debts is good practice as it maintains the accuracy of the collection databases. The same principles apply to accounts in credit
- 3.41 We will seek to minimise the cost of write-offs by taking all necessary action to recover what is due within a timely manner. All debts will be subject to the full recovery, collection and legal procedures as outlined in this policy.
- 3.42 Bills and reminders returned as 'Gone Away' will in all cases be submitted to the LOCTA search engine that the Council shares with a wide range of other local authorities. Where a forwarding address is not available through that means consideration will be given to the use of a Tracing Agent on a 'no success no fee' basis. The use of this resource will generally not be used for debts below £250.
- 3.43 Irrecoverable debts will be considered and referred, as appropriate, for write off in accordance with the Financial Regulations set out in the Council's Constitution. The following classifications of write off will be used and this will form the basis for future analysis.
- 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 (see 3.42 above).
  - 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 claimant has died and there are no or insufficient funds in the estate to settle the debt.

- The claimant is subject to formal insolvency proceedings, proof of debt has been lodged and on initial reports from the liquidator there is no/little likelihood of a dividend.
- Continuation of recovery action is not in the best interests of the Council.