

**Harborough District Council, Council Offices, Adam & Eve Street, Market
Harborough, Leicestershire, LE16 7AG.**

A Corporate Debt Policy.

“Where this Council seeks to collect money, the Council will issue bills promptly and correctly. Where recovery action is required, the Council will act quickly, fairly and impartially, but with due regard to the social welfare and human rights of our customers.”

Contents

1. Introduction
2. Strategy
3. Policies Common to all Types of Debt
4. Principles of Enforcement (all debts)
5. Write Offs (all debts) – See Appendix A3
6. Policies Specific to Sundry Debtors
7. Policies Specific to Council Tax and Non Domestic Rates
8. Policies Specific to the Recovery of Benefit Overpayments
9. Use of External Agents – See Appendix A2

- Appendix A1. Anti – Poverty Statement.
- Appendix A2. Bailiff’s Code of Practice.
- Appendix A3. Write Off Policy.

1. Introduction.

This Strategy ensures that the Council will rigorously collect all monies due to it. The policy ensures that the collection and recovery processes are fair to everyone, especially people on low incomes. This is accomplished by taking account of specific circumstances of each debtor.

Different types of debt have specific powers with regard to levying the charge and collection of sums due as these can be a mixture of Statutory and Non Statutory charges. The method for the billing and recovery of the statutory debts is tightly prescribed by Statute and our enforcement practices must take account of this diversity.

Wherever possible the Council will distinguish between those who **cannot pay** their debts and those who **will not pay** them. Any debtors who are identified as being able to pay, but are unwilling to do so will be dealt with in the most speedy and effective manner to ensure that the full debt is collected as soon as possible within the powers open to the Council.

Where genuine hardship exists, the Council's officers will adopt a more sympathetic and reasonable approach. It is the Council's policy both to ensure that money owed to the Council is recovered in the best manner possible and to ensure that people receive benefits and other reliefs to which they are properly entitled. However, where actions taken by the debtor have contributed to their situation, this will be taken into account in dealing with the case i.e. inappropriate expenditure.

This strategy is intended to ensure that all taxpayers and debtors are treated in a fair and consistent way, taking account of individual circumstances. People with serious debt problems will be encouraged to contact or seek advice from debt counselling agencies as appropriate.

The Council recognises that prompt, firm but fair action in collecting money is essential to ensure efficient and cost effective collection of monies due.

This strategy sets out the general principles to be applied in relation to debt management across all services provided by this Council. It is to be used together with more detailed procedural guidance for staff.

This document is structured to address Corporate and/or generic issues within the main document, with appendices for each specific service area.

2. Strategy.

2.1 The Aims of the Strategy:

- The Council has approved the formation of a Corporate Debt Team so that a consolidated approach to debt recovery can be implemented. This will ensure that the Council is pro-active in taking firm but fair action in collecting monies owed and achieving a reduction in the amount of overall arrears due to the Council.
- To provide a Corporate Debt service that works and takes people's needs into account
- To create a Corporate Debt enforcement team to ensure that all parts of the Council work the same way on billing, benefits and multiple debts; and
- Consider our customers' rights to a reasonable standard of living, be aware of other debts and outgoings when setting up arrangements.
- Take action against deliberate non-payers or those who delay payment without good reason;
- Ensure we make early contact to provide support and advice to avoid debts increasing;
- Encourage our customers to contact us and/or recognised advice agencies as soon as there is a problem and to encourage the use of external agencies to assist individuals.
- Work with people in debt, or at risk of getting into debt, to set payment arrangements they can afford and to stay in touch with customers until their debts are cleared. **See Appendix A2 – Anti – Poverty Strategy.**

2.2 The Primary Regulations Governing Collection

- The Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992.
- The Local Government Finance Act 1988 and the Non Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989.
- The Civil Procedure Rules 1999.
- The Insolvency Act.
- The Local Government Act 1972.

3. Policies Common to all Types of Debt

- 3.1 Every demand for money will be correctly addressed to the person who is liable to pay it. The name on the demand will be that of a person or body possessing “legal personality”
- 3.2 Demands will, wherever possible, be issued on the day of production.
- 3.3 All notices issued by the Council will comply with the corporate style guidance and be readily identifiable as being from the Council. All bills and notices will be clear, accurate and timely indicating what must be paid and when.
- 3.4 The Council will ensure that all follow up recovery documentation is clear and informative so that debtors are fully aware of the procedures and consequences and options available.
- 3.5 In the interest of economy and where appropriate all demands, reminders and final notices shall be issued by 2nd class post unless contrary to regulations or other statutory or legal requirements.
- 3.6 All relevant information relating to a demand will be kept either in paper or scanned image format until at least six years after the demand is raised. If at the end of that six-year period the demand still remains unpaid, the supporting documentation will be retained until either the bill is paid or the debt is written off.
- 3.7 The Council will attempt at all times to use the most appropriate and effective method of debt recovery in order to maximise income.
- 3.8 The Council will encourage the most cost effective payment methods with the emphasis being on unmediated electronic means where possible. “Unmediated” in the context of electronic payment methods means a method of payment that requires no human intervention by officers of the Council to achieve its crediting to the account in question.
- 3.9 Debts should be collected within the accounting period and before the next amount due. Anything other than this will lead to more hardship and perhaps start a downward spiral on the ability of the debtor to manage all debts.
- 3.10 Officers will be able to intervene in the recovery cycle in appropriate circumstances to deal with hardship or dispute situations. This includes the ability to make deferred payment arrangements where immediate payment is impossible due to lack of means. Recovery procedures should not be so rigid as to :-
 - Cause unnecessary hardship
 - Prevent an individual approach and flexibility where appropriate

- 3.11 Equality and diversity considerations will be taken into account in accordance with the Council's Equalities Policy. Specifically staff seeking to recover debts will have regard to:
- Ensuring information is accessible through translations, larger print versions or sign language, as appropriate to the needs of the debtor
 - The need for home visits where the debtors are unable to access advice services
- 3.12 Where the potential for a statutory benefit or discount exists in relation to the debt, efforts will be made to make the debtor aware of such opportunities and they will be assisted and encouraged to apply for these.
- 3.13. The authority will do everything possible to calculate benefit entitlement quickly and accurately.
- 3.14 The Council will encourage people with payment problems to come forward early to discuss their individual circumstances.
- 3.15 The Council welcomes the involvement of welfare agencies where authorised by the debtor in connection with debts due to the Council and recognise the benefits that these organisations can offer both the debtor and the Council in prioritising repayments to creditors and in maximising income available to the debtor.
- The Council recognises and values the provision of advice from the following agencies and will work in conjunction with them for the benefit of the debtor.
- Age Concern
 - Citizens Advice Bureau (CAB)
 - Shelter
 - Leicester Money Advice
- 3.16 The Corporate Debt Team will ensure that in cases of multiple debts there will be close liaison between service providers. Multiple debts are where a debtor has significant debts in more than one service area e.g. council tax and housing benefit overpayment. Such cases can present problems in determining the relative priority of the individual debts for both the individual concerned and the staff preparing settlement.

Overall our approach will be a proactive one to provide for multiple debt payment. In assessing the payment we will have regard to:

- The size of the debt
- Its relative priority, a decision needs to be made as to the Council's priority of debt management and allocation of payments.
- Consequences of failure to pay
- Circumstances of debtor
- Increases in the debt

- 3.17 The Council recognises that prompt recovery action is key in managing its debt and maximising income. The Council therefore aims to:
- Regularly monitor the level and age of debt.
 - Set clear targets for the recovery of debt.
 - Have clear written recovery procedures.
 - Set priorities for specific areas of debt and assess recovery methods to ensure maximum recovery.
 - Regularly review irrecoverable debts for write-off.
- 3.18 All accounts that are written off will be written off against the income code against which they are raised.
- 3.19 Where a Debt Collection Agency is procured to assist with the delivery of a service the flow of information between the Council and the agency should, wherever possible, be in a secure electronic format and strictly in accordance with the national standards for enforcement agents.
- 3.20 Where legislation permits, the Council will seek to levy and recover from the debtor any and all costs/fees that are legitimately due from the debtor to the Authority or its agents. Only in exceptional cases, where it would not be in the public interest to pursue costs/fees will they be waived. These cases would need to be referred to the Chief Financial Officer.
- 3.21 Where either national or local performance indicators exist the Council will strive for top quartile performance and will publish our actual performance against these targets as required. Progress reports will be made available at regular intervals during the year.
- 3.22 We will ensure enforcement staff are adequately trained to deal with the public or their representatives and provide clear advice on recovery matters and general advice on benefits.
- 3.23 We will also ensure that staff are provided with awareness training on money advice and debt counselling. This will enable them to give qualified advice to debtors and refer them to the correct bodies for specialist advice.

4. Principles of Enforcement (all debts)

- 4.1 The Council will follow the principles outlined below.
- Our action will be **proportional**
 - Our approach will be **consistent**
 - Our actions will be **transparent**

Additionally our intention will be to be firm and fair and our manner will be courteous.

- 4.2 **Proportionality** – Proportionality allows for a balance to be struck between the potential loss of income to the Council and the costs of compliance.
- 4.3 **Consistency** – Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aim to achieve consistency in:
- The advice the Council gives.
 - The use of our powers.
 - The recovery procedures used.

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

- The social circumstances of the debtor.
 - The debtor's payment history.
 - The debtor's ability to pay.
- 4.4 **Transparency** – Transparency is important in maintaining public confidence. It means helping people to understand what is expected of them and what they should expect from the Council. It also means explaining clearly the reasons for taking any recovery/enforcement action.

Transparency is a key part of the Council Officer's role. If action is required, the reasons why must be clearly explained, in writing, where required. If action is required time scales must be clearly stated. A distinction must be made between advice and legal requirements.

Communications should be in plain English and other mediums upon request.

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

5. **Write Offs (all debts)**

- 5.1 The Council recognise that where a debt is irrecoverable, prompt and regular write off of such debts is good practice.

The Council will seek to minimise the cost of write-offs to the local Council Tax and Business Rates payers by taking all necessary action to recover what is due. All debts will be subject to the full recovery, collection and legal procedures as outlined in this policy.

Irrecoverable debts will be referred to the authorised signatory at a pre-agreed frequency and in a pre-agreed format. **See Appendix A3 for the detailed Write Off Policy.**

The limitations for writing off irrecoverable debts are those contained within the Council's Financial Regulations.

6. Policies Specific to Sundry Debtors

- 6.1 The responsibility for the billing, collection and recovery of sundry debtor demands is held by the Head of Service.
- 6.2 Service providers will endeavour to obtain payment in advance or at the time of service delivery wherever permissible.
- 6.3 Except in the case of a demand payable by instalments or as otherwise contractually agreed, the settlement terms for all demands will be within 14 days.
- 6.4 Recovery action will commence no later than 14 days after the demand has fallen due. Recovery action 'profiles' are to be agreed between the revenues section and the account raising section. These profiles will include pre-agreed determinations, as to when to instigate litigation. Action taken will be dependent upon the type of debt.
- 6.5 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.
- 6.6 Sundry debtor invoices will be raised using the E Financials debtors system.
- 6.7 All statutory methods of enforcement of debts shall be available for use. These include:
 - Attachments of Earnings
 - Warrants of Execution (taking possession of goods/charging order on land/securities)
 - Third party Debt Orders
 - Insolvency
 - Possession proceedings
- 6.8 Prior to statutory methods of enforcement being taken, officers may use, where cost effective to do so, external collection agents, visits to the debtor's home by designated Council Officers and telephone contact with the debtor as an alternative means of recovering sundry debts.
- 6.9 Where legally permissible, the provision of future services to the debtor will be suspended until outstanding debts are settled.
- 6.10 Ownership of all sundry debts rests with the originating services and they can issue an instruction to cancel an invoice. It is the responsibility of the originating services to correspond with or discuss with the debtor issues relating to the validity of the debt.

- 6.11 The Corporate Debt Team will provide reports to the originating services on a regular pre-agreed basis as to the value of their outstanding accounts.

7. Policies specific to Council Tax and Non Domestic Rates

- 7.1** A Bill is issued giving 14 days notice of the first instalment.
- 7.2** Reminders will be issued on a monthly basis where the instalments have fallen into arrears. If a payment is not made within 7 days of the Reminder then further action commences.
- 7.3** If no Council Tax is paid within 7 days of the reminder, then a Final Notice stating that payment must be made in full within 7 days of that Final Notice or a Summons will be issued for the balance of the remaining year's charge, also incurring Court Costs for the debtor.
- 7.4** For Non Domestic Rates, no further reminder need be issued if a payment is not received during the 7day period following the notice.
- 7.5** A complaint is laid before the Local Magistrates Court for Summonses is to be issued. Summonses are to be stamped and signed by the Clerk to the Magistrates Court.
- 7.6** Summonses should be issued by First Class post, giving at least 14 days (plus time allowed for postage) notice of the Court Hearing. Court Costs, are incurred at this point by the debtor and should be included on Summons. HDC must pay to the Magistrates Court for each Summons issued.
- 7.7** At the Court Hearing, Magistrates will only consider **LIABILITY TO PAY** of anyone appearing before the court at this stage.
If the Liability is proven or not contested the Magistrates **MUST** grant a Liability Order.
- 7.8** In the case of Non Domestic Rates, after a Liability Order is granted a letter informing the debtor of the fact that the Council now have a Liability Order and that Bailiff Proceedings will be started within 14 days of the letter, unless the debt is paid. It is possible that a Council Recovery Officer may visit to attempt to collect the debt before passing the case over to the Bailiffs.
- 7.9** For non-payment of Council Tax, a letter will be sent informing the debtor of the Liability Order being granted by the Court and the options available to the Council in the event of non-payment (i.e. Attachment to Earnings, Jobseekers Allowance, Income Support or Bailiff Action), with a form requesting Financial Information which must be completed within 14 days or a fine may be imposed.
- 7.10** If, for Council Tax, there is no response to 7a, a further letter must be issued informing the debtor that if a payment is not made within 14 days the account will be forwarded to the Council's Bailiffs for collection. A Schedule 5 Notice should be sent with the letter informing the debtor of the Scale of Bailiff Costs.
- 7.11** Liability Orders must be forwarded to the Council's Bailiffs in the event of no response being received to 7.8, 7.9 and 7.10.

7.12 Should the Bailiff return a Liability Order endorsed 'No Effects on which to Levy', in the case of **individual's** Committal proceedings may be commenced in the Local Magistrates Court.

If a **company** Liability Order is returned endorsed 'No Effects on which to Levy' **no** Committal proceedings can be instigated. Proceedings may be commenced through the County Court for a Winding-up Order to be issued if it is known that the Company has sufficient assets.

7.13 For Committal proceedings commenced against individuals in the Local Magistrates Court, a Summons must be signed by the Clerk to the Court / Magistrates and either hand delivered by a HDC Recovery Officer or sent by Recorded Delivery, giving 14 days notice of the Court Hearing.

A Warrant of Arrest with or without Bail and Costs should be applied for in the case of no appearance or contact. In the case of an appearance, a Means Enquiry is to take place to ascertain if non-payment is due to Wilful Refusal or Culpable Neglect.

Magistrates are empowered to set suspended sentences pending agreed payments, Remit ALL or part of the debt, dismiss or adjourn the case, return for Attachment of Earnings or Benefit, or have the debtor committed forthwith to prison.

7.14 The Council do have other enforcement remedies which can be used which may include:

Council Tax Only

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

These methods shall only be used with consideration to the principles set out within 3.1 above.

7.15 The Lord Chancellor's Department has produced National Standards for Enforcement Agents (Appendix A2). Officers of the Council and contractors acting on its behalf in enforcement roles will comply with these standards.

7.16 Where recovery action has commenced, payment arrangements will generally only be entered into where the debt is secured by a liability order and/or the debtor agrees to make payment by way of Direct Debit. Arrangements will only be agreed by enforcement officers and will generally only be agreed to where:

- The debt will clear by the end of the financial year.
- The debtor provides details of employment in the event of a default.
- The debtor's proposals are reasonable in comparison with the amounts that could be secured by taking alternative action.
- The debtor demonstrates a clear intention to honour the arrangement.

- Consideration will need to be given to the debtors previous history.

7.17 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 enforcement officers prior to a liability order being obtained.

7.18 The Council will promote Direct Debit as its preferred method of receiving payment.

8 Policies Specific to the Recovery of Benefit Overpayments

8.1 An Invoice is issued.

8.2 Reminders are run for all ledgers on a weekly programmed basis:

a) A first reminder is sent 21 days after date of invoice.

b) A second reminder is sent 35 days after date of invoice.

c) A prompt to produce a Letter Before Action (LBA) to be sent by recorded delivery, 45 days after date of invoice.

d) Application made to DWP to see if benefits are in payment and to gain direct deduction of benefits until debt cleared.

8.3 If payment is not cleared in full within 14 days, then an enforcement of a judgement order is made on Form N322a to the County Court.

8.4 If no payment has been made on the total value of the invoice, then form N322 can also be issued to the County Court.

8.5 Billing and recovery

All invoices, reminders and finals issued will be raised through the Council's sundry debt system.

Invoices will only be raised when there is a recoverable overpayment of housing benefit and it cannot be recovered by other means.

When an invoice is issued, the Council will originally seek to recover the full amount in one payment within 28 days. However, arrangements can be made with the debtor depending on their individual circumstances.

Where an invoice has been raised and no payment has been received a reminder notice will be issued as soon as possible after the 28 days has elapsed. Reminders and final notices are usually sent out on a weekly basis.

If no, or insufficient, payment is made within 7 days of the reminder notice, a final notice will be issued as soon as is practicable.

If no, or insufficient payment, is made within 14 days of on the final notice the case will be considered for passing to the legal section to issue a claim against the debtor in the County Court. The aim is for full payment or a judgment to be made against the debtor.

Following the issue of a final notice the Council may decide to use an external agent to collect overpayments of housing benefit.

Any use of external agents will be made after a procurement exercise, following the Council's procurement strategy.

9. Use of External Agents (Bailiffs)

Bailiffs are employed as a last resort and follow a strict code of conduct agreed with the Council and in accordance with the National Standards for Enforcement Agents. After all attempts to gain payment have failed, a debtor's account will be passed to the bailiffs for collection.

The bailiff is employed to obtain goods belonging to the debtor and sell them to pay off the debt.

Bailiffs will make arrangements for payment under guidelines provided by the Council. Bailiffs' charges are substantial, but are not discretionary. They are laid down in legislation.

Once an account is passed to the bailiffs, all future payments must be made directly to them. Unless there are exceptional circumstances no arrangements or payments will be accepted by the Council.

The bailiffs strict Code of Practice, ensures that approval to remove must be sought from the Council prior to the removals of goods from the debtors homes. **See Appendix A2 for the Bailiff's Code of Practice.**

APPENDIX A1

ANTI –POVERTY STATEMENT

The Council:

- Understands the impact that financial difficulties can have on a customer and the stress that it can cause. The Council believes it is also in the customer's interest for a debt to be recovered to help break the cycle of social exclusion.
- Believes that customers have a responsibility to pay any monies due to the Council and in particular that those affect their home, personal liberty and livelihood (ie Council Tax and Business Rates)
- Will try and encourage customers to contact the Council as soon as they have a difficulty in meeting their payments
- Will treat each customer as an individual and will take account of the circumstances of the customer while recognizing the need for monies outstanding to be paid.
- Understands the customers obligation to their close dependants
- Will train our staff to support the customer as much as possible and to explore the possibility of advising the customer of any benefits, reliefs or discounts to which they may be entitled
- When dealing with multiple debts, will try and reach agreement with the customer on how payments are to be allocated. This will usually be in accordance with paying off priority debts first and advising customers of the consequences of taking, or not taking, certain courses of action.
- Will ensure that customers are aware of recovery action that could be taken against them if they fail to make payments or agree a suitable payment arrangement
- The Council will liaise and work with advice agencies (Market Harborough & Lutterworth Citizens Advice Bureau and Money Advice Units in particular) to try and provide a viable solution for a customer's payment problems
- Will seek to develop strategies in the future to start profiling customers and using information across a range of agencies to identify trends with a view to interacting with customers at an earlier stage to try and prevent them from accumulating debts.

APPENDIX A2

The Council currently uses two Bailiff Companies, and has signed Codes of Practice in place with both parties:

Bristow & Sutor.
Civil Enforcement Agents,
Bartlett Road, Washford, Redditch, Worcestershire, B98 0FL.

County Legal Services.
Certified Bailiff's,
Rutland House, 23 – 25 Friar Lane, Leicester, LE1 5QQ.

Agreement for the Provision of Bailiff Services in Respect of Council Tax and Business Rates.

Harborough District Council,
Council Offices,
Adam & Eve Street,
Market Harborough,
Leicestershire,
LE16 7AG.

Contact: Mr Dave Shawley (Revenues & Benefits Manager).
Telephone: (01858 -821222).
E-mail address: D.Shawley@harborough.gov.uk

Contact: Ms Michelle Radcliffe (Corporate Debt Team Leader).
Telephone: (01858-821277)
E-mail address: M.Radcliffe@harborough.gov.uk

Contents

| | |
|--|------------|
| 1. Introduction | 19 |
| 2. Terms used | 19 |
| 3. Professionalism and conduct of the enforcement agent | 19 |
| 4. Statutory or Financial Requirements for Enforcement Agencies.. | 20 |
| 5. Training and Certification | 20 |
| 6. Complaints/Discipline | 21 |
| 7. Information and confidentiality..... | 21 |
| 8. Procedure to be adopted by Enforcement Agency upon receiving Liability Orders from the Council. | 22 |
| 9. Times and Hours..... | 22 |
| 10. Goods | 24 |
| 11. Vulnerable situations | 24 |
| 12. Arrangement for payments..... | 25 |
| 13. General | 26 |
| 14. Monitoring | 26 |
| 15. Period of agreement..... | .10 |
| 16. Agreement Signatories..... | .10 |

CODE OF PRACTICE FOR BAILIFFS

1. Introduction.

This Code of Practice has been produced to standardise the operation of bailiffs working for Harborough District Council within Leicestershire to ensure a consistent approach to debt collection – primarily the recovery of Council Tax and the National Non-Domestic Rates. This Code of Practice forms the agreement between the parties.

This document provides guidance to bailiffs on some issues which may not be specifically covered in legislation, but which are relevant in a modern society.

2. Terms used.

In this document we have used the following terms:

- **Council:** Harborough District Council.
- **Debtor:** is a person or body that owes a sum of money – and for which a liability order has been obtained in the Magistrates Court. The Debtor should behave lawfully and be encouraged to co-operate with the enforcement agent.
- **Enforcement:** in this document we mean the lawful process of a liability order, to include attachment of earnings, distraint and levying on goods.
- **Enforcement Agency:** Bristow & Sutor.
- **Enforcement Agent:** someone who is responsible for the enforcement of court orders against goods (warrants of distress and execution) or the person (arrest warrants); we include those employed in the public and private sector, bailiffs, sheriffs' officers and distrainers.

3. Professionalism and conduct of the Enforcement Agent.

- Enforcement Agents must always produce relevant identification on request, such as a badge or ID card, together with a written authorisation to act on behalf of the Council.
- Enforcement Agents must act within the law at all times, including all defined legislation and observe all health and safety requirements in carrying out enforcement. They must maintain strict client confidentiality and comply with Data Protection legislation and, where appropriate the Freedom of Information Act.
- Enforcement Agents, for the purpose of distress or execution shall, without the use of unlawful force, gain access to the goods. The enforcement agent will produce an inventory of the goods seized and leave it with the Debtor, or at the premises, with any other documents that are required by regulations or statute.
- Enforcement Agents must carry out their duties in a professional, calm and dignified manner. They must dress appropriately and act with discretion and fairness.

- Enforcement Agents must not misrepresent their powers, qualifications, capacities, experience or abilities.
- Enforcement Agents must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.
- In circumstances where the Enforcement Agency requires it, and always where there have been previous acts of, or threats of violence by a Debtor, a risk assessment should be undertaken prior to the Enforcement Agent attending a debtor's premises.

4. Statutory or Financial Requirements for Enforcement Agencies.

- The Enforcement Agency must ensure that all recovery activities are conducted in strict accordance with the :
 - (a) Council Tax (Administration and Enforcement)(Amendment)(No 2) (England) Regulations 2003 (b) Non-Domestic Rating (Collection and Enforcement)(Local Lists)(Amendment) Regulations 2003.
- The Enforcement Agency should ensure that audited accounts are available on request.
- The Enforcement Agency must comply with statutory obligations, for example, the Companies Act, Value Added Tax, Inland Revenue provisions, Data Protection, Health & Safety etc.
- A separate account for monies due to the Council should be maintained and accurate books and accounts should be kept and made available to establish monies owed to the Council.
- The Enforcement Agency must keep a complete record of all financial transactions in whatever capacity undertaken.
- The Enforcement Agency must maintain suitable and comprehensive insurance cover for both professional indemnity and other risks including employer's liability and public liability. Insurance requirements must actively be re-visited each year to the satisfaction of the client and to ensure adequate and appropriate arrangements are in place.

5. Training and Certification.

- The Enforcement Agency must ensure that all agents, employees and contractors are provided with appropriate training to ensure that they understand and are able to act, at all times, within the bounds of the relevant legislation. This training should be provided at the commencement of employment and at regular intervals afterwards to ensure that the agent's knowledge is kept up to date.
- The Enforcement Agency must ensure that all employees, contractors and agents will at all times act within the scope of current legislation, i.e. The Companies Act, VAT, Inland Revenue provisions, Data Protection, Health and Safety etc, and have an appropriate knowledge and understanding of it and be aware of any statutory obligations and provide relevant training.
- The Enforcement Agency must ensure that all employees, contractors and agents should be trained to recognise and avoid potentially hazardous and aggressive situations and to withdraw when in doubt about their own or others'

safety. Professional training/assessment should be to an appropriate standard, for example to that of the *NVQ for Civil Enforcement Officers*; The Enforcement Agency must ensure that legislation restricting the enforcement activity to certificated bailiffs is complied with.

6. Complaints/Discipline.

- The Enforcement Agency must operate complaints and disciplinary procedures with which agents must be fully conversant.
- The complaints procedure should be set out in plain English, have a main point of contact, set time limits for dealing with complaints and an independent appeal process where appropriate. A register should be maintained to record all complaints.
- The Enforcement Agency is encouraged to make use of the complaints and disciplinary procedures of professional associations such as the *Association of Civil Enforcement Agencies or the Enforcement Services Association*.
- The enforcement agent must make available details of the comments and complaints procedure on request or when circumstances indicate it would be appropriate to do so.
- There may be some complaints raised by Debtors which need to be brought to the attention of the Council. Copies of any relevant correspondence must be forwarded to the Council where appropriate within seven days.

7. Information and confidentiality.

- All notices, correspondence and documentation issued by the Enforcement Agency must be clear and unambiguous and to the satisfaction of the Council.
 - On returning any un-executed warrants, the Enforcement Agent should report the outcome to the Council and provide appropriate information.
 - All information obtained during the administration and enforcement of warrants must be treated as confidential.
 - Enforcement Agents should provide clear and prompt information to Debtors.
 - Enforcement Agents should, so far as it is practical, avoid disclosing the purpose of their visit to anyone other than the Debtor. Where the Debtor is not seen, the relevant documents must be left at the address in a sealed envelope addressed to the Debtor.
 - Enforcement Agents will on each and every occasion when a visit is made to a Debtor's property which incurs a fee for the Debtor, leave a notice detailing the fees charged to date, including the one for that visit. Also the fees which will be incurred if further action becomes necessary. If a written request is made an itemised account of fees will be provided.
 - Enforcement Agents will clearly explain and give in writing, the consequences of the seizure of a Debtor's goods and ensure that Debtors are aware of the additional charges that will be incurred.
-

8. Procedure to be adopted by Enforcement Agency upon receiving Liability Orders from the Council.

- The Enforcement Agency will log all liability orders onto the system within 2 working days of receipt from the Council. Within a period of a further 5 working days any reference number will have been assigned and the Council notified accordingly.
 - Enforcement Agents will attempt to contact the Debtor within 5 working days by personal visit to obtain payment. If payment in full is not obtained then the agent must seek to make an arrangement to clear the amount. This arrangement must be within the guidelines set out by the Council. Whether an arrangement is agreed or not, the agent must seek the employment and or benefit details of the Debtor.
 - Payment arrangements should not normally exceed a period of 6 months for Council Tax and 3 months for Non Domestic Rates and must be confirmed in writing to the Debtor. If it appears that the Debtor may be eligible for benefit the bailiff should advise that they contact the Council direct. If a Bailiff wishes to extend the time given for payment, it must be by authorisation of the Council.
 - If the agent is unable to make contact with the Debtor on that first visit, details of how to contact the agency, along with details of the debt should be left at the premises in a sealed envelope. Up to two further personal visits must be attempted by the Agency – these to be at least 36 hours apart – in order to make contact with the Debtor with one visit being made after 6.00 pm on a weekday, or between 8.00 am and 4.00 pm on a Saturday.
 - All liability orders must be returned within 6 months of the instruction unless a longer period has been authorised by the Council.
 - When attempting to levy distress, should it be found that a benefit, discount claim or appeal has been submitted and not determined, the Council shall be informed and enforcement shall be deferred for a period of 7 working days so that the application can be properly processed, following confirmation by the Council.
 - If during contact with the Debtor employment details or receipt of Income Support is established, this should be clearly advised on any return to the Council.
-

9. Times and Hours.

- Enforcement should not be undertaken on Sundays, on Bank Holidays, on Good Friday or on Christmas Day/Boxing Day, unless the court specifically orders otherwise or in situations where legislation permits it.
- Enforcement should only be carried out between the hours of 6.00am and 9.00pm or at any time during trading hours, existing legislation must be observed.
- Enforcement Agents should be respectful of the religion and culture of others at all times. They should be aware of the dates for religious festivals and

carefully consider the appropriateness of undertaking enforcement on any day of religious or cultural observance or during any major religious or cultural festival.

10. Goods.

- Enforcement Agents must only take goods in accordance with the appropriate regulations or statute.
 - Enforcement Agents must ensure that goods are handled with reasonable care so that they do not suffer any damage whilst in their possession and should have insurance in place for goods in transit so that if damage occurs this is covered by the policy.
 - Enforcement Agents should not remove anything clearly identifiable as an item belonging to, or for the exclusive use of a child.
 - A receipt for the goods removed should be given to the Debtor or left at the premises.
 - Enforcement Agents should take all reasonable steps to satisfy themselves that the value of the goods impounded in satisfaction of the judgment is proportional to the value of the debt and charges owed.
 - A schedule of goods that cannot be seized forms part of the annex.
 - Enforcement Agents must receive approval from the Council before removal of goods in all cases.
-

11. Vulnerable situations.

- Enforcement Agents must recognise that they have a role in ensuring that the vulnerable and socially excluded are protected and that the recovery process includes procedures about how such situations should be dealt with. The appropriate use of discretion is essential in every case and no amount of guidance could cover every situation, therefore the agent has a duty to contact the Council and report the circumstances in situations where there is potential cause for concern. If necessary, the Enforcement Agent will advise the Council if further action is appropriate. The exercise of appropriate discretion is needed, not only to protect the Debtor, but also the Enforcement Agent who should avoid taking action which could lead to accusations of inappropriate behaviour.
- Enforcement Agents must withdraw from domestic premises if the only person present is, or appears to be, under the age of 18; they can ask when the Debtor will be home or other methods of contact [e.g. a 'mobile' phone number] - if appropriate.
- Enforcement Agents must withdraw without making enquiries if the only persons present are children who appear to be under the age of 12.
- Wherever possible, Enforcement Agents should have arrangements in place for rapidly accessing translation services when these are needed, and provide on request information in large print or in Braille for debtors with impaired sight.

- Those who might be potentially vulnerable include:
 - severely physical or mentally disabled;
 - the elderly those 70 or more years;
 - people with a disability;
 - the seriously ill;
 - the recently bereaved;
 - single parent families;
 - pregnant women 35 weeks or more;
 - unemployed people; and,
 - those who have obvious difficulty in understanding, speaking or reading English.

In all the above cases the Enforcement Agency will take no further action and refer the cases back to the Council for guidance.

The Bailiff will take no further action and will refer to the Council in all the following circumstances:

- The debtor is over 65 years of age.
- The debtor (or debtors partner) is suffering from serious long-term or acute illness, or is fragile because of advanced age or disability

12. Arrangement for payments.

- In all cases, the Enforcement Agents should attempt to collect the full balance outstanding at the time of the initial visit, but if this is not possible every effort must be made to enter into either an agreement to pay at weekly, fortnightly or monthly intervals.
- The Enforcement Agent has discretion to accept a Debtors proposal for payment by instalments. The Enforcement Agent should take a judgement regarding the best way to recover debt in the particular circumstances of each case weighing up the apparent net income of the Debtor and the goods available for sale.
- The Enforcement Agent may, at his discretion, give instalments up to a maximum of six months and this may be extended for a further period with the permission of the Council.
- Payments by cheque must be accepted unless there is a previous history of dishonoured cheques from the Debtor
- The Enforcement Agent must issue numbered official receipts for all payments collected, where a pre-paid envelope is provided by the customer.
- The Enforcement Agent must not charge the Debtor an arrangement fee, fees for dishonoured cheques or any other fee not expressly allowed by law.
- When making an arrangement all Debtors will be expected to enter into a walking possession agreement under which goods are itemised on a list as security in the event of payments not being received. A copy of the list must be left with the Debtor.

- The Enforcement Agent will contact the Council immediately if a Debtor claims their account has been paid, and will take no further action until they receive confirmation or a response from the Council.

13. General.

- The Enforcement Agency will forward employment details (if held) to the Council for both paid in full and returned cases.
- The Enforcement Agency shall have office and telephones manned from 9.00 am until 5.00 pm so that Debtors can contact them. Calls must be answered within 10 rings.
- The Enforcement Agency will provide the facility for a direct access to their records and sufficient training to allow Council's staff access during the hours of 8.00 am to 6.00 pm.
- The Enforcement Agency will provide the Council with a dedicated telephone, separate from the public.
- The Enforcement Agency will respond to or acknowledge all correspondence within 5 working days.
- The Council reserves the right in exceptional circumstances to request the Enforcement Agency to inform the Debtor in writing that the Liability Order is being executed prior to a visit.
- The Council is to be provided with copies of all documentation to be issued by the Enforcement Agency, and reserves the right to request amendments during the term of this agreement.
- Whilst it is expected that the majority of liability orders will be for Debtors who live in Leicestershire, the Enforcement Agency must give a national coverage so that liability orders can be executed anywhere in England and Wales.
- If the Enforcement Agency assigns liability orders to another firm of Enforcement Agents in a different locality, the firm which is assigned to must be a member of the Certificated Bailiffs Association and must be approved by the Council.
- Any costs which are charged which are different to the charges laid down in this agreement shall be borne by the Enforcement Agency themselves and not passed on to the Council.
- A copy of the Enforcement Agency professional indemnity insurance policy will be required by the Council on appointment and at renewal dates.

14. Monitoring.

- The following areas will be monitored as shown.
- Regular inspections of the Enforcement Agency's premises will be carried out by the Representative, of the Council.
- Regular meetings (not less than quarterly) will be arranged to assess performance standards and discuss any failure in delivery. The Enforcement Agency at his own expense shall allow relevant staff to attend these meetings.
- The Enforcement Agency will supply monthly and cumulative statistics to the Council within five days of the end of each month in relating to Council Tax, and Non-Domestic Rates.

Appendix E

- (a) The number of liability orders received by the Enforcement Agency (and cash value).
 - (b) The number of liability orders returned by the Enforcement Agency (and cash value).
 - (c) The number (and cash value) of (b) which have been returned paid in full.
 - (d) The number (and cash value) returned certificated.
 - (e) The number (and cash value) returned at each the Council's request.
 - (f) The number (and cash value) returned for "other" reasons.
 - (g) The number (and cash value) of liability orders currently in possession of the Enforcement Agency.
 - (h) The number (and cash value) or liability orders in the possession of the Enforcement Agency for a period of greater than six months.
 - (i) The number (and cash value) of liability orders currently on hold at the request of the Council.
 - (j) The number (and cash value) of liability orders currently on arrangement.
 - (k) The percentage of (a) collected.
 - (l) The total cash collected
 - (m) The number of complaints received about the bailiffs actions.
-

15. Period of Agreement.

This agreement shall run for an initial period of three years commencing on the date of the signature of all parties.

Agreement Signatories.

Signed By:

Dated:

Position on behalf of:

**Harborough District Council,
Council Offices,
Adam & Eve Street,
Market Harborough,
Leicestershire,
LE16 7AG.**

Signed By:

Dated:

Position on behalf of:

Enforcement Agency Details.

APPENDIX A3

Harborough District Council – Detailed Write Off Policy.

1. Purpose of this policy

The purpose of this policy is to prescribe the standard procedures to be followed by officers within the Revenues division when it is considered inappropriate to continue to collect and enforce the recovery of Council Tax, Non Domestic Rates and Housing Benefit Overpayments, Sundry Debtors and Former Tenant Housing Arrears.

2. Financial Implications

In accordance with Financial Regulations, the Chief Finance Officer has authorisation to write off debts in respect of amounts up to £1000 in total due from an individual debtor. Before monies can be considered for write off, documentary evidence confirming actions taken to recover and trace the debt must support the request. Details of the numbers and values of cases written off under delegated power will be reported to the Executive Committee for information purposes.

Amounts in excess of £1000 in total will be reported to Executive Committee at regular intervals and will be detailed individually stating the name of debtor, the period of debt, the amount of debt and the reason the debt is irrecoverable.

3. Circumstances when it will be appropriate to write off monies

It will be necessary to write off irrecoverable debts in a variety of circumstances. These can be categorised as follows:

- **debts where the debtor/company is insolvent (Bankruptcy/Liquidation) and Administrative Receivership cases
- **debts where the debtor has served a custodial sentence in respect of the debt
- **debts where the debtor is deceased and the estate is insolvent
- **debts which are remitted by the courts due to hardship
- debts where the debtor has absconded
- small value non-recurring debts
- debts which are uneconomical to collect or where it is considered inappropriate to continue with legal or recovery action due to an individuals known personal or financial circumstances.
- debts where a company has ceased to trade leaving no assets
- debts which cannot be legally enforced

4. General Guideline:

- (a) Debts written off between £100.00 and £999.99 will need approval by the Chief Finance Officer who may delegate the authority to the Head of Service.
- (b) Debts exceeding £1000 will need approval by the Executive Committee.
- (c) Small Balances up to £99.99 can be approved by the Revenues and Benefits Manager.

Although the **amount** of the debt would normally dictate the amount of time and resource allocated in trying to collect the various debts, in some of the circumstances shown above (marked with **) the debt must be written off irrespective of the amounts involved. Each heading is detailed below explaining actions that will be taken by the Council.

The administration and collection of Council Tax and Non Domestic Rates are somewhat different to that of Overpayments of Housing Benefit, and therefore different procedures will be adopted. These are treated separately under headings detailed below.

5. Write Off – Council Tax and Non Domestic Rates

5.1 Introduction

It should be noted that in all cases where the a debtor is jointly liable for the debt with another person(s), recovery action will continue against all liable individuals and only once and if action fails will monies be recommended for write off.

5.2 Reasons and procedures for Write Off

5.3 Mandatory Write Offs

a. ****Bankrupt (applies either to Council Tax, or Non-Domestic Rates where there is a personal liability e.g. sole traders or partnerships).**

Upon notification, a proof of debt will be completed covering all charges due within the bankruptcy period and submitted to the trustee in bankruptcy. Once a claim has been issued the total debt will submitted for write off in accordance with financial regulations.

Whilst these cases will be monitored periodically for payment, it is accepted as good accounting practice that liability should be reduced to £10 indicating that the debt cannot be enforced or recovered.

In the very unlikely event of payment being received in full or part from the proceeds of the bankrupts' estate, this money will be credited back to the relevant account.

b. **Voluntary Arrangements/Administration Orders****

This course of action is an alternative route available to an individual wishing to avoid the restrictions placed by a bankruptcy order being made. It involves the debtor

making an offer to all creditors, which is less than the full amount of the debt outstanding to be repaid over a period of time in full and final settlement. If 75% of creditors agree to the offer as an alternative to proceeding for bankruptcy, an insolvency practitioner administers the Voluntary Arrangements with Administration Orders administered by the County Court.

Whilst these cases will be monitored periodically for payment, it is accepted as good accounting practice that liability should be reduced to £10 indicating that the debt cannot be enforced or recovered during the life of the order and in many cases is likely to remain unpaid as a result of future default.

Once the order is in force the total of the debt (less £10) will be included on a list of cases submitted for write off and authorised in accordance with financial regulations.

c. **Liquidation

This applies to Limited or PLC's (Public Limited Companies).

Upon notification, a proof of debt will be completed covering all charges covered up to the date of liquidation and submitted to the appointed liquidator. Once a claim has been issued, the total debt will be submitted for write off in accordance with financial regulations.

Whilst these cases will be monitored periodically for payment, it is accepted as good accounting practice that liability should be reduced to £10 indicating that the debt cannot be enforced or recovered. In the very unlikely event of payment being received in full or part from the sale of assets, this money will be credited back to the relevant account.

d. **Company Voluntary Arrangements

This course of action is an alternative route available to a company wishing to avoid the making of a winding up order. It involves the directors making an offer to all creditors, which is less than the full amount of the debt outstanding to be repaid over a period of time in full and final settlement. If 75% of creditors agree to the offer as an alternative for winding up proceedings, an insolvency practitioner administers the Voluntary Arrangements.

Whilst these cases will be monitored periodically for payment, it is accepted as good accounting practice that liability should be reduced to £10 indicating that the debt cannot be enforced or recovered during the life of the order and in many cases is likely to remain unpaid as a result of future default.

Once the order is in force the total of the debt (less £10) will be included on a list of cases submitted for write off and authorised in accordance with financial regulations

e. **Administrative Receivership

This involves an individual being appointed by a lender, usually a bank which holds a debenture as security over a floating charge on assets of the company, and usually takes effect where the company is in default of agreed lending terms.

It involves an insolvency practitioner taking immediate control of the company in an attempt to sell it as a going concern. Unfortunately, although remaining in occupation,

Appendix E

no action can be taken against the receivers appointed to enforce payment of previous or on going rate charges.

In the circumstances it is prudent to treat the debt as irrecoverable, reducing the debt to £10 but monitoring the case on a six monthly basis with regards to the likelihood of any sale and notifying them of any new charges they have fallen due.

The debt will then be included on a list of cases submitted for write off and authorised in accordance with financial regulations.

f. **Debts where the debtor has served a custodial sentence in respect of the debt

If a case is the subject of Committal Proceedings and a debtor has been imprisoned for non payment of Council Tax or Business Rates, whilst monies outstanding are not legally remitted on imprisonment, the authority cannot enforce the debt again through the court system in the event of continued non-payment.

It is accepted as good practice by the Audit Commission to write off the monies as irrecoverable.

g. **Debts where the debtor is deceased and the estate is insolvent

Where a debtor has died and the estate is insolvent, the debt will be recommended for write off provided that the executor has produced a letter confirming that there are no assets from which to discharge any outstanding liability.

h. **Debts which are remitted by the Courts due to hardship

Where there is an application to request the commitment of a debtor to prison, one option available to the Magistrates is to remit monies on the grounds of hardship. In order to determine this the Magistrates must be satisfied that there is inability to pay.

These will be reported to the Executive Committee for their information but will not fall under financial regulations, as the Council has no discretion to over rule the decision.

5.4 Discretionary Write Offs

In addition to all of the above circumstances where the Council is legally prevented from taking action to pursue the recovery of monies due, there will be instances where recovery cannot be enforced because either;

- the debtor cannot be traced or,
- where it is deemed inappropriate to recover the monies on the grounds that it is uneconomical to collect based on the value of the debt or on the grounds of an individuals personal circumstance.
- a company has ceased to trade leaving no assets.
- a debt is legally unenforceable.

The steps to be followed in recommending write off of the debt will vary dependent on the status and size of the debt as detailed below.

a. Small Balances.

(a). There is a facility within the Academy Revenues Software to run a Report of Small Balances and these sums are automatically written off. A Report of the cases processed is produced. Suggested limit >£10.

(b). The Revenues and Benefits Manager should be given delegated powers to write off small balances between £10.01 and £49.99 subject to the cost effectiveness of taking Recovery action.

©. The Revenues and Benefits Manager should be given delegated powers to write off small balances between £50.00 and £99.99 and the criteria will be based on the write off criteria already set out in this policy.

b. Gone No Trace/Absconded.

Before the debt can be recommended for write off, the following enquires should be undertaken by officers within the Revenues division:

- Check Council Tax database to identify if the person has re registered at another address within the district
- Check with Housing Department
- Contact Landlord or Letting/Estate Agents/Solicitors
- Contact neighbouring local authorities
- Check with electricity and gas service providers
- Undertake visits to property where considered appropriate
- Check Experian

If after all enquires have been completed a forwarding address has not been established, the amount will be recommended for write off.

c. Debts, both ongoing and finalised where it is deemed inappropriate to continue with legal or recovery action due to an individuals known personal or financial circumstances.

The authority has no powers under Council Tax legislation to write off debts because of hardship. However before cases are considered for both bailiff action or committal to prison proceedings, each will be considered on its individual merits taking into account the information available regarding an individuals age, health and financial position.

On rare occasions, it may be considered inappropriate to proceed with further high profile enforcement action either because to do so would cause considerable hardship or because the personal circumstances of the individuals concerned may result in unnecessary and sensitive media attention.

By enforcing recovery on those whose circumstances render them already vulnerable, our actions may cause unacceptable hardship and this raises moral as well as cost questions.

It is important to remember that the term hardship does not purely relate to an individuals financial position, and it can also refer to their age, state of health, emotional or mental condition but obviously the circumstances of individuals vary greatly so there is no definitive list.

In these circumstances, if it is considered that where all reasonable recovery attempts have failed and write off appears the only viable option, A report will be taken for a decision to be made whether it is appropriate to write off all or part of the debt on the grounds of reasonableness.

d. Debts where a company has ceased to trade leaving no assets

On occasions, limited companies will cease to trade on the grounds of having no assets to pay but they will not go through the formal process of winding up proceedings which have both cost and legal implications. Where this occurs, the Council could take steps to officially put the company into compulsory liquidation resulting in the removal of the company from companies register. This action is costly to undertake, and there is no advantage gained by the Council over other creditors.

In these circumstances, if it is proven that the bailiff has failed to recover monies due or identify assets on which to levy distress, because committal to prison proceedings are not an option, a recommendation for write off will be made in line with financial regulations.

e. Debts which cannot be legally enforced

Certain debts will fall outside of legal jurisdiction either because the debtor will have left the country or 6 years may have passed before recovery action has been instigated against an individual since the debt was acknowledged.

Whilst cases of this type will be very rare, where contact in writing has failed to result in payment or an arrangement to pay, a recommendation for write off will be made in line with financial regulations.

5.5 Post Write Off Procedure

Following write off, a record of each debt will be held for a period of 6 years along with all supporting papers. Should a debtor be traced or new information come to light material to the original decision, the debt will be written back and recovery action commenced as appropriate.

5.6 Write Off - Overpayments of Housing Benefit

Overpayments of Housing Benefit can result from a variety of reasons as summarised below.

- **Local Authority Error** The Council fails to act on a notified change of circumstances.
- **Benefits Agency Error** The Benefits Agency award benefit incorrectly.
- **Claimant/Other Error** The claimant fails to inform the Council of a change in circumstances.
- **Fraudulent Error** The claimant knowingly fails to report a change with the intention of receiving more benefit than they are entitled too.

As a result, before an overpayment can be recovered, the Council must identify the reason why the overpayment occurred. If it is considered that the claimant could “reasonably have been expected to know that an overpayment would result because

of there failure to notify that their benefit was being calculated on incorrect information”, the overpayment is legally recoverable.

Regulations allow the debt to be recovered in a number of ways including but not restricted to the following enforcement actions:

- Recovering it from an ongoing entitlement of benefit
- Recovering by sundry debt invoice
- Direct deductions from landlords
- Instigating County Court proceedings

However, because of the individual nature of overpayments which can be very complex/sensitive, the recovery of each must be considered individually having regard to the debtors circumstances and the level/cost of action necessary to recover the debt to determine if the overpayment is realistically recoverable

This is because, the fact that an overpayment is recoverable does not exclude it from being written off, especially where it would be considered that to pursue it would cause undue hardship to the individual or it would be deemed uneconomical to collect. Therefore, the objective of any policy is to strike a balance between protecting the councils’ financial position and making sure that anti poverty issues are addressed.

If the case is considered and a decision made that the overpayment is irrecoverable, the amount will be written off in accordance with the financial regulations (i.e.) with debts up to £1000 being authorised by the Chief Financial Officer or their nominated Deputy and debts exceeding £1000 reported to the Executive Committee.

5.7 Mandatory Write Offs

a. Bankruptcy

Upon notification, a proof of debt will be completed covering all charges covered within the bankruptcy period and submitted to the trustee in bankruptcy. Once a claim has been issued, the total debt will be submitted for write off in accordance with financial regulations. In joint and severally liable cases, action will be taken against the other liable person only for any monies due during the relevant period.

In the very unlikely event of payment being received in full or part from the bankrupts’ estate, this money will be credited back to the relevant account.

b. Voluntary Arrangements/Administration Orders

This course of action is an alternative route available to an individual wishing to avoid the restrictions placed by a bankruptcy order being made. It involves the debtor making an offer to all creditors, which is less than the full amount of the debt outstanding to be repaid over a period of time in full and final settlement. If 75% of creditors agree to the offer as an alternative to proceeding for bankruptcy, an insolvency practitioner administers the Voluntary Arrangements with Administration Orders administered by the county court.

Whilst these cases will be monitored periodically for payment, it is accepted as good accounting practice that liability should be reduced to £10 indicating that the debt can not be enforced or recovered during the life of the order and in many cases is likely to remain unpaid as a result of future default

Once the order is in force the total of the debt (less £10) will be included on a list of cases submitted for write off and authorised in accordance with financial regulations.

c. Debts which cannot be legally enforced

Certain debts will fall outside of legal jurisdiction either because the debtor will have left the country or 6 years may have passed before recovery action has been instigated against an individual since the debt was acknowledged.

Whilst cases of this type will be very rare, where contact in writing has failed to result in payment or an arrangement to pay, a recommendation for write off will be made in line with financial regulations.

5.8 Discretionary Write Offs

In addition to the above circumstances where the Council is legally prevented from taking action to pursue the recovery of monies due, there will be instances where recovery cannot be enforced because either;

- the debtor cannot be traced or,
- where it is deemed inappropriate to recover the monies on the grounds that it is uneconomical to collect based on the value of the debt or on the grounds of an individuals personal circumstance.

The steps to be followed in recommending write off of the debt will vary dependent on the status and size of the debt as detailed below.

5.9 Where an overpayment is uneconomical to pursue.

Factors that should influence the decision whether an overpayment is economical to pursue are: -

- a) The size and age of a debt in relation to where it is in the recovery process and the costs of certain action which could be taken to try and secure recovery.
- b) Any previous action taken on the case and the results.
- c) Whether we know the current address of the debtor?
- d) When was the last action taken to try and recover the overpayment?
- e) Are all documents in sufficient order to support the recovery of the overpayment?

From here, Council officers will calculate how much it would cost the Council to proceed with certain action and whether it is economically viable to do so. In broad terms, the following principles are appropriate,

a. Debts under £50 where a forwarding address is known for debtor

These cases where considered appropriate to collect will be pursued by the Council by issuing up to 3 written notices. If not successful, the amount will be submitted to the Executive and Chief Finance Officer or their nominated Deputy for write off.

b. Debts over £50 where a forwarding address is known for debtor

Where 3 notices have been issued without success, these cases where considered appropriate to collect will be referred to either the Councils bailiff's or a debt collection agency for collection work to be undertaken at pre-determined and negotiated rates (based on a percentage of the successful collection of the debt based on its age).

These cases will remain live on the system until the debt is either collected, or is returned to the Council as uncollectable when a further decision will be taken whether to recommend monies be written off in accordance with financial regulations or passed to the Corporate Debt section to commence action in the County Court.

Some cases may be proceeded to the County Court as an alternative to referring to a debt collection agency where it is felt appropriate.

c. Debts up to value of £200 where the debtor has absconded.

Before the debt can be recommended for write off, the following enquires should be undertaken by officers within the Revenues division:

- Check Council Tax database to identify if the person has re registered at another address within the district
- Check with Housing Department
- Contact Landlord or Letting/Estate Agents
- Contact neighbouring local authorities
- Check with electricity and gas service providers
- Undertake visits to property where considered appropriate

If after all enquires have been completed a forwarding address has not been established, the amount will be recommended for write off.

d. Debts over £200 where the debtor has absconded

In these cases, the following enquires should be undertaken by officers within the Revenues division:

- Check Council Tax database to identify if the person has re registered at another address within the district
- Check with Housing Department
- Contact Landlord or Letting/Estate Agents
- Contact neighbouring local authorities
- Check with electricity and gas service providers
- Undertake visits to property where considered appropriate

If no address can be established, the amount will be recommended for write off but the case will be referred to either the Councils bailiff's or a debt collection agency for trace and collection work to be undertaken at pre-determined and negotiated rates (currently £35 per trace plus a percentage of the successful collection of the debt based on its age). The total amount of the debt less £10 would be recommended for write off which will ensure the account remains LIVE on the accounting system, pending Bailiff/Agency enquires/success in collection. In the event that the bailiff/agency traces the debtor and collects the debt, the write off will be reversed.

e. Where an overpayment is legally recoverable but the Council feels it inappropriate to pursue its recovery.

As stated previously, at all times the decision to exercise the right to pursue a recoverable overpayment shall be based on the individual circumstances of each case. The power to recover monies is discretionary, unlike Council Tax and Non Domestic Rate debts. Therefore at any stage of the enforcement process, it may be considered appropriate to submit a debt for write off in accordance with financial regulations on the grounds of hardship having regard to the following factors:

- The claimants age and state of health
- The claimants financial position and responsibilities
- The claimants diligence in reporting a change of circumstances (if applicable)
- The standard of advice and notification given to the claimant in respect of the overpaid amount
- Whether it is reasonable to expect the claimant or any other person affected to repay the overpayment
- Whether recovery will cause unacceptable hardship to the claimant or any other person affected

All requests will be supported by a report detailing all appropriate evidence.

5.10 Post Write Off Procedure

Following write off, a record of each debt will be held for a period of 6 years along with all supporting papers. Should a debtor be traced or new information comes to light material to the original decision, the debt will be written back and recovery action commenced as appropriate.