

# **Tonbridge & Malling Borough Council**

## **Corporate Debt Recovery Policy**

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### **Introduction**

The Council aims to ensure that all monies due to the Council are recovered economically, efficiently and effectively in order for it to continue to provide services and keep the council tax as low as possible for those who are liable to pay it. In pursuit of that aim, the Council will endeavour to treat all customers equally, in-line with the Council's standards of customer-care and will differentiate between those who can pay, but do not, and those having genuine difficulty in paying. Each annex provides details of debt recovery procedures employed that may be specific to that particular service. However, the key principles noted below are common to all debt recovery procedures and must be included in any new or amended procedures.

### **Statement of Intent**

The Council will treat all debtors in a consistent manner which is fair, sympathetic, firm and cost-effective whilst ensuring that it distinguishes between those who cannot pay and those who will not pay.

At all times the action taken to recover debts will take account of, and comply with, other relevant Council policies including but not limited to – equality, violence at work, and the vulnerable persons policy.

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## Corporate Debt Recovery Policy

### Key Principles

The following key principles will be applied to all areas of debt recovery:

- Hard copy invoices/bills and notices are issued and sent to debtors promptly and in accordance with published/statutory requirements.
- Where a debtor is in receipt of housing benefit and/or council tax reduction, the Council will make every effort to ensure that the debtor is receiving the maximum benefit to which they are entitled.
- Debtors who cannot pay will, as far as possible, be distinguished from those who will not pay.
- Recovery action will be fair and equitable with the aim of ensuring that, where debtors have the means, they fulfil their obligation to pay their debts.
- An appraisal of the debtor's circumstances will be undertaken and used as the basis for agreeing mutually acceptable repayment arrangements.
- We will aim to strike a fair balance between the claims of Tonbridge and Malling Borough Council and those of competing creditors. Where such a need is identified, debtors will be asked if they have considered seeking assistance from a money advice service such as the CAB.
- Every effort will be made to maintain communication with debtors.
- Irrecoverable Debts  
When a debt is deemed to be irrecoverable the process outlined in the Council's Financial Rules will be implemented.

### Further Information

Additional information relating to the repayment of Council debts may be obtained from the Financial Services.

By e-mail: [financial.services@tmbc.gov.uk](mailto:financial.services@tmbc.gov.uk)

# **Tonbridge & Malling Borough Council**

## **Corporate Debt Recovery Policy**

### **Annex A - Council Tax Recovery Policy**

#### **Foreword**

The Council aims to ensure that all monies due to the Council are recovered economically, efficiently and effectively in order for it to continue to provide services and keep the council tax down for everyone who is liable to pay it. In pursuit of that aim, the Council will endeavour to treat all customers equally, and in-line with the Council's standards of customer-care, and differentiate between those who can pay, but do not, and those having genuine difficulty in paying. This policy specifically addresses issues relating to the recovery of council tax debts. However, it must be read in the context of the Council's Corporate Debt Recovery Policy.

#### **The recovery process**

- Reminder notices, final notices and summonses are issued in accordance with the recovery timetable approved each year by the Director of Finance and Transformation.
- Following the hearing of summonses by the Magistrates, information request letters will be issued within seven days, or as soon as practicable thereafter.
- Pre-bailiff/enforcement agent letters will be issued 21 days after the issue of information request letters, or as soon as practicable thereafter.
- All cases not subject to a payment arrangement (see below), or other recovery action, will be sent to the Council's bailiff/enforcement agent 14 days after the issue of pre-bailiff/enforcement agent letters.

#### **Payment arrangements**

- Except in exceptional circumstances, all arrangements will require the debt to be paid within the current financial year.
- Arrangements for payment of a debt, where the debt will not be cleared by the end of the current financial year, will be agreed only where there is a proven inability to clear the debt by the end of the year. Unless agreed otherwise by a senior officer, such arrangements will be made only if the debtor completes and returns a financial statement form.
- All payment arrangements will be confirmed in writing to the debtor.
- If an information request letter has already been sent to the debtor, a payment arrangement will be made only on condition that the information request is completed by the debtor and returned to the Council (unless the arrangement is over a period of less than one month).
- Once a case has been passed to the bailiff/enforcement agent, it is not the Council's practice to intervene in discussions between the bailiff/enforcement agent and the debtor as to collection of the debt. The Council will intervene in exceptional circumstances, by, for example, coming to a payment arrangement direct with the debtor. However, such payment arrangements will not be made without the express agreement of a senior officer.

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- The purpose of all arrangements is to achieve payment of the debt in the shortest possible time, at a rate that is realistically affordable by the debtor. Where possible, a lump sum payment “up front” will be sought from the debtor. Where more than one council tax account is involved (e.g. if the debtor has moved), priority will be given to keeping payments for the current year up-to-date. Debtors will be encouraged to set up a direct debit for the current year’s payments.
- Where a debtor is on Income Support/JSA (IB)/ESA (IR)/Pension Credit, an arrangement will not be agreed to (unless there are exceptional circumstances) that allows the debtor to pay less than the current recovery amount that can be attached from their state benefit.
- If an arrangement is broken, the debtor will be contacted no later than one month after the default occurs. The debtor will be given the chance to bring the arrangement up-to-date before it is cancelled.
- Where a debtor has defaulted on one arrangement, a further arrangement will not be agreed unless there is a good reason why the original one was broken.

### Reminders, final notices and summonses

- Once issued, a reminder, final notice or summons will be withdrawn only for one of the following reasons:
  1. It has been issued in error; or
  2. the issue of the notice has crossed with the taxpayer’s payment (a notice is unlikely to be withdrawn on more than one occasion for this reason); or
  3. a senior officer has agreed the withdrawal; or
  4. it appears that the person will not be liable to pay the amount of the debt shown on the notice, for example because they have moved or they have a pending benefit claim. The notice will be withdrawn only once it has been confirmed that there will be nothing left to pay.
- A final notice may be withdrawn if the taxpayer agrees to change to payment by direct debit (and sets up an instruction).
- Where appropriate, the withdrawal of summonses will be confirmed in writing.
- Debtors in receipt of reminders, final notices and summonses are encouraged to convert to direct debit.

### Costs

Costs may be cancelled where:

1. the Magistrates’ Court has ordered their cancellation; or
2. although the issue of the summons was legally correct, the Council has reason to believe that the taxpayer was genuinely unaware of the debt; or
3. there is evidence of extreme hardship; or
4. a senior officer of the Council has agreed to their withdrawal.

The amount of the costs is not negotiable.

### Bailiffs/Enforcement agents

- Once the Council has passed a debt to its bailiffs/enforcement agents for collection, the bailiff/enforcement agent will generally be allowed to collect the debt with minimal interference from the Council. Any debtor wishing to make a

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payment arrangement against a debt that is with the bailiff/enforcement agent will be referred to the bailiff/enforcement agent.

- The Council wishes to ensure that its bailiffs/enforcement agents are acting within the law and in accordance with the standards expected by the Council. Any evidence of malpractice by the bailiff/enforcement agent will be investigated by the Council.
- The Council will not seek to interfere with the level of fees charged by the bailiff/enforcement agent unless it appears that they are not legally correct.
- The Council will withdraw a case from the bailiffs/enforcement agents if:
  1. it was sent to the bailiff/enforcement agent in error; or
  2. the Council is collecting another debt from the debtor by means of deductions from income support/JSA (IB)/ESA (IR)/pension credit; or
  3. it would be more effective to use a different recovery method, for example attachment of the debtor's earnings; or
  4. at a senior officer's discretion, the circumstances of the debtor are exceptional for any reason.

### Attachment of Earnings Orders (AEOs)

- An AEO is the Council's preferred method of recovery.
- Once an AEO has been issued to an employer of the debtor, it will not be withdrawn without the express agreement of a senior officer.
- Generally employers will be instructed to implement orders strictly in accordance with the legislation.
- Where an employer fails to implement an AEO, the case will be referred to a senior officer who will pursue the matter with the Council's solicitor.

### Deductions from Income Support/JSA (IB)/ESA (IR)/Pension Credit

On account of the low income from these payment methods, they are generally used only when it is not possible to secure a higher level of payment from the debtor.

### Debt Counselling

- If someone has contacted a debt counselling agency (e.g. CCCS, CAB), we will take a sympathetic line. Where a financial statement has been prepared, and the information supplied has been accepted, any reasonable offer of payment that is based on the statement will be considered and accepted if appropriate.
- If a case is already with the bailiff/enforcement agent by the time the debtor seeks advice, the case will be left with the bailiff/enforcement agent until he has been able to ascertain whether there are sufficient goods on which to levy. The bailiff/enforcement agent will be contacted and made aware of the debtor's circumstances. Having done this, the bailiff/enforcement agent will be requested to cease further action unless it is apparent that the debtor is able to pay the debt.

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### Bankruptcy

The Council recognises that sometimes it might have no alternative other than to commence bankruptcy proceedings for the recovery of unpaid council tax. In order to establish whether bankruptcy is the most appropriate method of recovery, the officers of the Council will refer to the Council's document entitled "Guidelines for staff in respect of the use of bankruptcy".

### Charging Orders

- A charging order may be made against a dwelling where the owner is subject to a liability order for unpaid council tax, subject to the amount of the liability order plus costs being at least £1,000.
- In deciding whether to apply for a charging order, each case will be considered, on its merits, by a senior officer of the Council. An application for an order is made to the County Court.
- In deciding whether to grant an order, the court must consider all aspects of the case, such as the personal circumstances of the debtor and whether any other person would be unduly prejudiced by the making of an order.
- If the making of a charging order by the Court does not produce payment from the debtor, then the Council will consider asking the Court for an Order for Sale.
- If the debtor's outstanding debts (mortgage, council tax etc.) might exceed the estimate of the likely sale price of the property at auction, we will still proceed in applying for a charging order if the difference between the two were marginal. If the difference were more than marginal, then we might still proceed if other factors were relevant, for example:
  1. the general good of the community, taking into account factors such as the appearance of the area; or
  2. the desire to bring an empty property onto the market and available for occupation; or
  3. the prevention of an ever-accumulating debt.

### Committal

- Where all other methods of recovery have either failed or are considered inappropriate, the Council will apply to the Magistrates' Court for a warrant of commitment against the debtor.
- On account of the potentially serious consequences to the debtor of imprisonment, all of the debtor's personal circumstances will be fully considered by a senior officer before pursuing this course of action.

### Irrecoverable Debts

- The council may write off the whole, or a proportion, of a debt depending on the circumstances of the particular case. The most common circumstances in which the council will write off a debt are where:
  1. It is uneconomical to pursue recovery; or
  2. There are humanitarian grounds for not pursuing recovery; or
  3. The debtor has died; or
  4. The debtor cannot be traced; or
  5. The debtor has been declared bankrupt.

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### **ANNEX B - Housing Benefits Overpayment Policy**

#### **Foreword**

An overpayment is defined under Housing Benefit legislation, as being any payment to which there was no entitlement. This policy is designed to set out guidelines for Benefits staff when dealing with benefit overpayments. It is essential that each case should be reviewed on its merits and that appropriate action be taken only after considering all the facts. Any discretion should be exercised in a fair and reasonable manner. However, this policy is intended to set a framework within which recovery actions can be made.

#### **Policy Aims**

The aims of the policy are to:

- maximise the recovery of all overpaid benefit through the measures set out below, and
- recover overpaid benefit in the most cost-effective way.

Affected parties will be notified in accordance with regulations and will be clearly informed of any rights to dispute the Council's decisions.

When identifying that an overpayment has arisen, the following factors need to be determined:

- the cause of the overpayment;
- whether or not the overpayment is recoverable;
- whether or not we should seek to recover the overpayment;
- from whom recovery will be sought;
- the method of recovery and, if the amount is to be recovered by instalments, the periodic amount that is to be recovered.

Housing benefit overpayment staff should negotiate instalment repayment rates at a level that will fully repay the debt within the current financial year when practical to do so. However, where a claimant can show that these levels of recovery will cause undue hardship to themselves or their family, then reduced instalments may be agreed if a financial statement is submitted to the Housing Benefit Overpayment Section.

#### **Causes of overpayments**

Benefit overpayments can be caused by any one or combination of the reasons shown below:

- notification of a change of circumstance after the change has occurred;
- failure by a claimant to notify a change of circumstances;

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- the deliberate withholding of information by an interested party (for example a landlord); the provision of incorrect information by a claimant or someone acting on their behalf;
- fraudulent encashment of a benefit payment cheque;
- the death of a claimant, and
- from errors made by staff of the Department of Work and Pensions and/or the Council's own staff. These are known as "official errors".

### **Deciding if an overpayment is recoverable**

When deciding if an overpayment is recoverable all of the pertinent facts, supporting evidence and the Benefit Regulations must be taken account of by the Benefits Section.

Generally, all overpayments are recoverable except when they are the result of an "official error". However, even these are recoverable if it is decided that the claimant could reasonably have been expected to realise that it was an overpayment at the time payment was made.

Due regard of the circumstances relating to the individual case shall be taken into account when deciding if recovery of the overpayment is appropriate.

### **Deciding if an overpayment should be recovered**

Having decided that an overpayment is recoverable a decision then needs to be made on whether or not recovery action is to be taken.

A decision not to recover an overpayment is permissible by law but should only be made in exceptional circumstances under the authorisation of the Director of Finance. The Council's Financial Rules set out the procedures for writing off such debts.

### **Deciding if non-recovery of recoverable overpayments is appropriate**

Where it is believed that the recovery of an overpayment, taking into account social factors, is unreasonable and will cause hardship or significant distress, no recovery shall be sought.

Subject to the approval of the Director of Finance and Transformation, Benefits Overpayment staff will consider not taking recovery action in instances where the claimant's social factors are exceptional and in the following circumstances when known:

- the claimant (or any partner) is terminally ill;
- the claimant is about to enter a residential home; or
- the claimant is suffering from a mental illness.

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### Deciding from whom benefit should be recovered

From April 2006 the Regulations state that if an overpayment was caused by misrepresentation or failure to disclose information, the overpayment must be recovered from the person who actually misrepresented or failed to disclose that information.

If the overpayment was caused by an official error it must be recovered from the person who, at the time of receiving the overpayment or any notices relating to the payment, could reasonably have been expected to realise that it was an overpayment.

If neither of the above apply the overpayment can be recovered from:

- the claimant;
- the claimant's partner, if they were members of the same household, both at the time of the overpayment and when it is being recovered; or
- the person to whom the overpayment was paid

### Appeals against overpayments and recovery

When the Council receives an appeal, within the allowed time period, against the calculation of an overpayment or the decision as to whom it is recoverable from, by a person entitled to appeal the decision then any action to recover the overpayment should be suspended awaiting the outcome of the appeal.

However, if the debtor wishes to make payments against the debt these will not be refused.

### Methods of recovery

Overpayments may be recovered by one or more of the following options provided that no undue hardship is caused to the claimant or former claimant:

- deductions from ongoing benefit;
- deductions from earnings
- the issue of an invoice;
- from ongoing benefit paid by another Council;
- deductions from other benefits paid to the claimant by the Department for Work and Pensions; or
- recovery from payments to a landlord in respect of the benefit due to other tenants where that benefit is paid directly to the landlord. Applies in specific 'blameless tenant' circumstances such as when the tenant has died or moved address.
- Recovery from debt collection agency

### Deductions from ongoing benefit

There are two prescribed rates of deduction from ongoing benefit depending on whether the overpayment has arisen as a result of fraud or not. These rates are usually reviewed annually, normally in April. For illustrative purposes with effect from April 2015 the standard rates are:

- a) £18.50 in the case of a claimant having been found guilty of fraud or having made an admission under caution of deception or fraud for the purpose of gaining benefit

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or they have agreed to pay a penalty under Section 45A of the Administration Act and the agreement has not been withdrawn; and

b) £11.10 in other cases.

The following additions may also be made:

- half of any applicable earnings disregard; □  
half of any disregarded regular voluntary or charitable payment; and
- half of any war disablement pension or war widow's pension. TMBC has chosen to omit these pensions from its recovery considerations.

These are the maximum mandatory rates of overpayment recovery and may be reduced if individual circumstances warrant such a course of action. Higher rates of recovery are possible if these are arranged with the consent of the person they are being recovered from.

### Deductions from earnings

It is now possible, to recover overpaid benefit via direct earnings attachments.

These operate in a very similar way to attachment of earnings orders in respect of unpaid council tax. Previously it was only possible to attach a debtor's earnings in respect of overpaid benefit after a County Court judgment had been obtained. This is no longer the case.

### Issue of an invoice

In the case of deceased debtors, invoices will be issued to the estate of the individual. In these instances recovery action will be dependent upon the specific circumstances of each case.

Recovery of overpayments for cancelled claims will be started by the issue of an invoice. In the first instance the aim will be to recover the overpayment by a single payment. However, where the claimant can show that this is unaffordable, payment by instalment may be negotiated. It is at this stage that investigations into recovery via third parties (other local authorities and DWP) may be undertaken.

Where the debtor is no longer entitled to benefit because their income is too high, instalments may be agreed after taking into account their net disposable income and reasonable financial needs (the applicable amount used in the last calculation of benefit subject to changes in respect of dependents). Net disposable income may be estimated without the need for absolute proof.

Repayments must be set at levels that the former claimants can reasonably be expected to pay. As a rule of thumb, instalments should not usually be greater than 50% of the "excess income" as calculated in accordance with the previous paragraph. Instalments can be renegotiated at any time to take account of varying circumstances.

- If the debtor fails to make payment in full or agree an arrangement to pay within 14 days of the invoice being issued (and there is no ongoing dispute) a reminder will be sent.
- If payment in full or an arrangement is not then made within a further 16 days a "Letter before Action" will be issued. This will advise the debtor that legal action

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or referral to a debt collection agency will be commenced if payment is not received in full or an arrangement made within a further 10 days.

- If the debtor fails to respond appropriately within 10 days **further recovery action will be taken.** The decision on which of these actions is to be taken is solely dependent on which one is expected to maximise the amount recovered.

### **Deductions from benefits paid by another local authority**

Where the former claimant fails to repay an invoiced overpayment, and is in receipt of benefit from another Local Authority, that Authority is to be asked to recover the overpayment by weekly deductions.

### **Recovery by deduction from benefits paid by the DWP**

If the former claimant fails to repay an invoiced overpayment, and is in receipt of one of the benefits listed in Regulation 105 of the Housing Benefit Regulations 2006, the appropriate office is to be asked to recover the overpayment from one or more of the benefits received.

### **Recovery of overpayments from Landlords and Agents**

If the debtor continues to be entitled to receive benefit then the recovery will normally be by deduction from ongoing benefit paid to the landlord unless the landlord has agreed to repay the debt in full directly.

However, in instances where the debtor is no longer entitled to receive benefit, the Social Security Administration (Fraud) Act 1997 allows the recovery of an overpayment of benefit to be made from a current tenant of a landlord even though the debt relates to a former tenant of the landlord. This only arises when the landlord was paid direct for the former claimant and an overpayment arose. This method of recovery is exceptional and must only be used in the appropriate circumstances. Recovery is said, in these circumstances, to be being made from “blameless tenants”.

### **Recovery from a Debt Collection Agency**

Debt referred to a debt collection agency shall be on a commission only basis. Such commission shall not be passed on to the debtor nor shall the debt collection agency be empowered to take recovery action, unless authorised by the Director of Finance and Transformation, other than as follows: Reminder letters, Telephone calls, Text messages and Home visits.

### **Legal Considerations**

If, having exhausted all of the above mentioned actions, the debt remains unpaid the Council will consider the appropriateness of other legal action. **The Council will register a HB Overpayment decision as a judgement of the court. This allows the Council to use any of the court's enforcement procedures for recovery of the debt. These can include:**

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- A warrant of execution which gives court enforcement agents the authority to take goods from the debtor's home or business. The county court enforcement agents can only enforce a warrant for debts up to £5,000, For any higher amounts the order will be transferred to the High Court;
- Third party debt order which stops the debtor being able to access their bank accounts;
- A charging order which prevents the debtor from selling their assets such as land and property;
- An order to obtain information can be granted if the Council holds little or no information about the debtor;
- A bankruptcy order where the debtor owes £5,000 or more and an arrangement to pay has not been agreed.

### Write Off Procedure

Outstanding overpayments will be regularly reviewed to identify any debts that are irrecoverable and need to be authorised for write-off by the Director of Finance and Transformation under delegated powers or by the Finance, Innovation and Property Advisory Board. The delegated authority for write offs is as follows and additional information is provided in **[Appendix 1]** to this document:

- The Director of Finance and Transformation may authorise the write-off of debts up to £1,000.
- Debts of over £1,000 need to be authorised for write-off by the Cabinet..

The following are circumstances where a recoverable overpayment might be reasonably considered for write-off: -

- the debtor has absconded and cannot be traced via Locta, Experian, CIS etc;
- the debtor has died leaving no estate;
- the debt has been returned by the Magistrates' Court;
- the debt is uneconomical to collect; or
- it is considered inappropriate to recover a debt due to the physical and/or mental condition of the debtor.

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### **ANNEX C - General Debt Recovery Policy**

#### **Introduction**

These procedure notes provide guidelines for the recovery of the Council's general debts. General debts are those debts held on the Council's Sales Ledger System and do not include – Council Tax, Business Rates, Car Park Penalty Charge Notices, Housing Benefit Overpayments or Statutory Fines.

Debtors will be notified in accordance with relevant regulations (sewerage schemes, emergency Building Control works etc) and will be clearly informed of any rights they may have to dispute the Council's decisions.

#### **Debt Recovery Process**

Invoices are raised on a daily basis and, for debt recovery purposes, a notional 'due by' date of seven days after the date of the invoice is used. If the invoice is not paid within seven days and the debtor has neither queried the charge nor requested payment by instalments (see below) debt recovery proceedings will commence.

- The first reminder letter is issued 18 days after the date of the invoice
- A legal notice is issued 32 days after the date of the invoice
- A Letter Before Action is issued 46 days after the date of the invoice
- The debt is passed to a debt collection company 76 days after the date of the invoice.
- If, after a maximum of 90 days with the debt collection company, the debt has not been recovered in full or an instalment arrangement entered into, the debt is returned to the Council for legal action to be considered.

The Director of Finance & Transformation may amend the timings of each of these actions as appropriate.

Court action should not be instigated solely because of the legal right of the Council to do so, but because it is a reasonable route left open after other means of recovery have been attempted.

#### **Instalment Arrangements**

A Chief Officer in consultation with the Director of Finance & Transformation may enter into or agree other payment terms which reflect the ability of the debtor to repay their debt or where there are special circumstances that need to be taken into consideration. Instalment arrangements may usually only be arranged for non-corporate debtors or charities and only after their specific circumstances have been fully considered. In practice the amount of the instalments and term of the arrangement are governed by the debtors' financial situation and their ability to pay.

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If at all possible the arrangement should provide for the debt being repaid as soon as possible and within the current financial year. If the repayment term exceeds 12 months the Council may apply an interest rate where allowable.

If a debtor fails to adhere to an agreed instalment arrangement the debt becomes payable in full as soon as the payment has been missed. However, if the debtor forewarns the Council that they will be unable to make a payment and the reason given is acceptable, the arrangement may be allowed to continue with either the term extended or the value of the missing payment incorporated into the remaining instalments.

### **Legal Considerations**

If, having exhausted all of the above mentioned actions, the debt remains unpaid the Council will consider the appropriateness in taking formal legal action in line with prevailing legal requirements. In such instances guidance will be sought from the Chief Solicitor.

If the debtor owns property it may be possible to place a Land Registry Charge on the property. Again, in such instances, the advice of the Chief Solicitor should be obtained.

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### **ANNEX D - Parking Penalty Charge Notice Debt Recovery Policy**

#### **Foreword**

The Council aims to ensure that all monies due to the Council are recovered economically, efficiently and effectively in order for it to continue to provide services and keep the council tax down for everyone who is liable to pay it. In pursuit of that aim, the Council will endeavour to treat all customers equally, and in line with the Council's standards of customer-care, and differentiate between those who can pay, but do not, and those having genuine difficulty in paying. This policy specifically addresses issues relating to the recovery of Penalty Charge Notice debts. However, it must be read in the context of the Council's Corporate Debt Recovery Policy.

#### **Introduction**

The recovery process for Penalty Charge Notices is governed, in the main, by legislation. Parts of the process are automated to ensure that each case is treated consistently and that the necessary time scales are respected and achieved. Whenever possible, and within the constraints of the legal process, the Council will consider mitigation, at any stage, in a sympathetic but consistent manner, in line with the adopted policies of the South East Parking Group and national guidelines. Where the driver has not offered mitigation, or it has been rejected, the legal process will proceed to recover the outstanding charge.

#### **Legal enforcement and recovery process**

- All drivers are legally entitled to 14 days in which to pay the Penalty Charge Notice at a 50% discounted rate. The system is set to allow a further 3 days for delays in posting and processing before the amount increases to the full charge.
- The discount period is extended for a further 14 days from the date of any reply to representations or mitigation.
- After 30 days, unpaid Penalty Charge Notices will be referred to the DVLA to identify the registered keeper. The law expects the registered keeper to be responsible for unpaid Penalty Charge Notices.
- Statutory Notices and reminders will then be sent, in a timely manner within the guidelines, to the registered keeper informing him/her of the consequences of not making full payment and allowing him/her to make contact with the Council to arrange payment of the outstanding balance or offer fresh mitigation as to why enforcement should not continue. Each communication, including the original Penalty Charge Notice, provides details of the appeals procedure and offers opportunities to contact the Council to resolve the outstanding matter.
- At the relevant stage the case will be prepared for Debt Registration at the Traffic Enforcement Centre where an order for recovery is sought. The opportunity still exists for the registered keeper to make contact and arrange payment or in some circumstances seek an independent review.

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- All cases not subject to a successful payment arrangement (see below), or not subject to an accepted challenge or appeal by the TEC or Traffic Penalty Tribunal, will be sent to the Council's bailiff 36 days after the issue of an Order of Recovery.

### Payment arrangements

- Arrangements will not normally be considered when the charge is at the discount stage.
- Requests to make payments by instalments will only be considered if supported by financial evidence.
- Other than in exceptional circumstances, all arrangements will require the debt to be paid within one calendar year.
- The purpose of all arrangements is to achieve payment of the debt in the shortest possible time but at a rate that is realistically affordable by the debtor.
- The debtor will normally be expected to make an immediate initial payment.
- Payment arrangements will be confirmed in writing to the debtor.
- Where more than one Penalty Charge Notice is involved, the arrangement will endeavour to clear cases at the most advanced stage of enforcement first.
- If an arrangement is broken the debtor will be contacted no later than one month after the default occurs and be given the opportunity to bring the arrangement up-to-date. Failure to do so will result in the cancellation of the arrangement and the immediate resumption of the enforcement process.
- Where a debtor has defaulted on one arrangement it is unlikely that a second one will be agreed unless there is a good reason why the original one was broken.
- Once a case has been passed to the bailiff it is only he who can determine and agree any further payment arrangement. It is not the Council's practice to intervene in discussions, between the bailiff and the debtor, as to the collection of the debt although it would expect the Bailiff to show due consideration to any particular circumstances that might justify any arrangement.

### Debt Counselling

- The Council will normally adopt a sympathetic view to any approach by a debt counselling agency provided a financial statement is submitted and is accepted. It will endeavour to agree an appropriate sum and rate of repayment in all cases.
- If the approach is made after the case is already with the bailiff then the bailiff will be advised of the circumstances and requested to cease further action until both the Council and the Bailiff have been able to assess the situation and determine what course of action is appropriate.
- This may include continuing with the execution of the distress warrant or returning it, pending the debtor being in a better position to settle the debt.

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### Bailiffs/Enforcement Agents

- The Council will only use Bailiffs that are members of a recognised professional body and are committed to working in accordance with national guidelines and / or regulations.
- The Council will ensure that its bailiffs are acting within the law and in accordance with the standards expected by the Council. Any evidence of malpractice by the bailiff will be investigated fully by the Council.
- Once the Council has passed a debt to its bailiffs for collection, the bailiff will generally be allowed to collect the debt with minimal interference from the Council. Any debtor wishing to make a payment or an arrangement against a debt that is with the bailiff will be referred to the bailiff.
- The Council will not seek to interfere with the level of fees charged by the bailiff, unless it appears that they are not legally correct. However it will seek their co-operation in minimising their fees in appropriate circumstances.
- The Council will normally only withdraw a case from the bailiff if in the opinion of a Senior Officer there are exceptional circumstances, or on the advice of the Bailiff himself.
- The Council will maintain regular contact with each Bailiff company ensuring that overall performance is satisfactory and that any specific cases do not require an alternative approach. The Council will normally rely upon the professional judgement of the Bailiff in all cases.
- The Council will seek to engage a minimum of two Bailiff Companies to encourage maximum performance and offer flexibility where necessary. Each bailiff will be expected to return unexecuted warrants well within the lifetime (1 year) of that warrant to enable an alternative company to attempting tracing and execution of the warrant.

### Bankruptcy

- If a debtor provides a Bankruptcy Order, or any other evidence of insolvency, dated after the issue of the Penalty Charge Notice/s, the Council would write off the Notice. However a claim would be lodged with the receiver in the hope that some payment would be forthcoming.
- Any Penalty Charge Notice issued after any Bankruptcy or Insolvency Order was made, would be payable and dealt with in accordance with the above policy.

### Irrecoverable Debts

If a debt appears irrecoverable the Council may write off the whole, or a proportion, of a debt depending on the circumstances of the particular case. The most common circumstances in which the council will write off a Penalty Charge Notice are where:

- The Bailiff considers there are insufficient funds upon which to levy distress
- The debtor cannot be traced
- The debtor has died
- The debtor has been declared bankrupt.
- It is uneconomical to pursue recovery
- There are humanitarian grounds for not pursuing recovery

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### ANNEX E - National Non-Domestic Rate Recovery Policy

#### Foreword

The Council aims to ensure that all monies due to the non-domestic rate pool are recovered economically, efficiently and effectively. In pursuit of that aim, the Council will endeavour to treat all customers equally, and in-line with the Council's standards of customer-care, and differentiate between those who can pay, but do not, and those having genuine difficulty in paying. This policy specifically addresses issues relating to the recovery of non-domestic rate debts. However, it must be read in the context of the Council's Corporate Debt Recovery Policy.

#### The recovery process

- Reminder notices, final notices and summonses are issued in accordance with the recovery timetable approved each year by the Director of Finance & Transformation.
- Following the hearing of summonses by the Magistrates, pre-bailiff letters will be issued as soon as practicable thereafter.
- All cases not subject to a payment arrangement (see below), or other recovery action, will be sent to the Council's bailiff/enforcement agent 14 days after the issue of pre-bailiff/enforcement agent letters.

#### Payment arrangements

- Except in exceptional circumstances, all arrangements will require the debt to be paid within the current financial year.
- Arrangements for payment of a debt, where the debt will not be cleared by the end of the current financial year, will be agreed only where there is a proven inability to clear the debt by the end of the year. Unless agreed otherwise by a senior officer, such arrangements will be made only if the debtor completes and returns a financial statement form.
- All payment arrangements will be confirmed in writing to the debtor.
- Once a case has been passed to the bailiff/enforcement agent, it is not the Council's practice to intervene in discussions between the bailiff/enforcement agent and the debtor as to collection of the debt. The Council will intervene in exceptional circumstances, by, for example, coming to a payment arrangement direct with the debtor. However, such payment arrangements will not be made without the express agreement of a senior officer.
- The purpose of all arrangements is to achieve payment of the debt in the shortest possible time, at a rate that is realistically affordable by the debtor. Where possible, a lump sum payment "up front" will be sought from the debtor.
- Where more than one non-domestic rate account is involved (e.g. if the debtor has moved), priority will be given to keeping payments for the current year up-to-date. Debtors will be encouraged to set up a direct debit for the current year's payments.
- If an arrangement is broken, the debtor will be contacted no later than one month after the default occurs. The debtor will be given the chance to bring the arrangement up-to-date before it is cancelled.

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- Where a debtor has defaulted on one arrangement, a further arrangement will not be agreed unless there is a good reason why the original one was broken.

### Reminders, final notices and summonses

- Once issued, a reminder, final notice or summons will be withdrawn only for one of the following reasons:
  1. It has been issued in error; or
  2. the issue of the notice has crossed with the ratepayer's payment (a notice is unlikely to be withdrawn on more than one occasion for this reason); or
  3. a senior officer has agreed the withdrawal; or
  4. it appears that the person will not be liable to pay the amount of the debt shown on the notice, for example because they have moved. The notice will be withdrawn only once it has been confirmed that there will be nothing left to pay.
- A final notice may be withdrawn if the taxpayer agrees to change to payment by direct debit (and sets up an instruction).
- Where appropriate, the withdrawal of summonses will be confirmed in writing.
- Debtors in receipt of reminders, final notices and summonses are encouraged to convert to direct debit.

### Costs

- Costs may be cancelled where:
  1. the Magistrates' Court has ordered their cancellation; or
  2. although the issue of the summons was legally correct, the Council has reason to believe that the taxpayer was genuinely unaware of the debt; or
  3. there is evidence of extreme hardship; or
  4. a senior officer of the Council has agreed to their withdrawal.
- The amount of the costs is not negotiable.

### Bailiffs/enforcement agents

- Once the Council has passed a debt to its bailiffs/enforcement agent for collection, the bailiff/enforcement agent will generally be allowed to collect the debt with minimal interference from the Council. Any debtor wishing to make a payment arrangement against a debt that is with the bailiff/enforcement agent will be referred to the bailiff.
- The Council wishes to ensure that its bailiffs/enforcement agents are acting within the law and in accordance with the standards expected by the Council. Any evidence of malpractice by the bailiff/enforcement agent will be investigated by the Council.
- The Council will not seek to interfere with the level of fees charged by the bailiff/enforcement agent, unless it appears that they are not legally correct.
- The Council will withdraw a case from the bailiffs/enforcement agents if:
  1. it was sent to the bailiff/enforcement agent in error; or
  2. it would be more effective to use a different recovery method; or
  3. at a senior officer's discretion, the circumstances of the debtor are exceptional for any reason.

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### Debt Counselling

- If someone has contacted a debt counselling agency (e.g. CCCS, CAB), we will take a sympathetic line. Where a financial statement has been prepared, and the information supplied has been accepted, any reasonable offer of payment that is based on the statement will be considered and accepted if appropriate.
- If a case is already with the bailiff/enforcement agent by the time the debtor seeks advice, the case will be left with the bailiff/enforcement agent until he has been able to ascertain whether there are sufficient goods on which to levy. The bailiff/enforcement agent will be contacted and made aware of the debtor's circumstances. Having done this, the bailiff/enforcement agent will be requested to cease action unless it is apparent that the debtor is able to pay the debt.

### Insolvency

- The Council recognises that sometimes it might have no alternative other than to commence insolvency proceedings for the recovery of unpaid non-domestic rates. In order to establish whether insolvency is the most appropriate method of recovery, the officers of the Council will refer to the Council's document entitled "Guidelines for staff in respect of the use of bankruptcy".

### Security For Unpaid Rates

- If a ratepayer has an interest in a property (occupied or unoccupied), the Council may enter into an agreement that any interest is made the subject of a charge to secure payment.
- In consideration of such a charge, the Council will take no further recovery action for the amount concerned for a period specified in the agreement.
- The agreement may not be made for a period of more than three years. It may extend to further amounts becoming due from the ratepayer and it may provide for the payment of interest on sums outstanding (and for that interest, also to be subject to the charge).

### Committal

- Where all other methods of recovery have either failed or are considered inappropriate, the Council will apply to the Magistrates' Court for a warrant of commitment against the debtor.
- On account of the potentially serious consequences to the debtor of imprisonment, all of the debtor's personal circumstances will be fully considered by a senior officer before pursuing this course of action.

### Irrecoverable Debts

- The council may write off the whole, or a proportion, of a debt depending on the circumstances of the particular case. The most common circumstances in which the council will write off a debt are where:
  1. It is uneconomical to pursue recovery; or
  2. There are humanitarian grounds for not pursuing recovery; or
  3. The debtor has died; or
  4. The debtor cannot be traced; or
  5. The debtor has been declared insolvent.

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### Appendix 1 - Value based action plan

Amount	Recovery action sequence	Write off action
£0 to £1	No action.	Submit to Director of Finance and Transformation for write off as uneconomic to pursue.
£1.01 to £15	<ul style="list-style-type: none"> <li>• Overpayment notification.</li> <li>• Issue invoice or deduct from on-going benefit.</li> <li>• Issue first reminder.</li> </ul>	Submit to Director of Finance & Transformation for write off as uneconomic to pursue if the debt remains unpaid 35 days after the issue of the first reminder.
£15.01 to £499.99	<ul style="list-style-type: none"> <li>• Overpayment notification.</li> <li>• Issue invoice or deduct from on-going benefit.</li> <li>• Issue first reminder.</li> <li>• Issue Letter before Action.</li> <li>• Check Locta, DWP &amp; Experian.</li> <li>• Refer to debt collection agency.</li> </ul>	Submit to Director of Finance & Transformation for write off as uneconomic to pursue when debt collection agency return the debt as uncollectable ( no payment arrangements)
£500.00 to £1,000.00	<ul style="list-style-type: none"> <li>• Overpayment notification.</li> <li>• Issue invoice or deduct from on-going benefit.</li> <li>• Issue first reminder.</li> <li>• Issue Letter before Action.</li> <li>• Check Locta, DWP, Experian</li> <li>• Use tracing agents, proactive telephone calls and home visits.</li> <li>• Refer to debt collection agency.</li> <li>• If no payment arrangement is made with 'agency then if the debtor is working or possesses sufficient assets apply to the County Court for judgement. Utilise Charging orders, consider attachment of earnings, instruct County Court Bailiffs, consider insolvency.</li> </ul>	Submit to Director of Finance & Transformation for write off on return of debt as uncollectable by the debt collection agency or action via the Court proves ineffective or not appropriate (due to case information )
£1,000.01 and greater.	As for over £500.01.	Submit to FI&PAB via Director of Finance & Transformation for write off upon return of debt as uncollectable by the debt collection agency or if action via the Court proves to be either ineffective or not appropriate.

# **Tonbridge & Malling Borough Council**

## **Corporate Debt Recovery Policy**

**Adopted July 2012  
Revised May 2014  
Revised January 2015**