

# 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 the debt recovery procedures used by 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 person's policy.

## **Key Principles**

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

- Hard copy/electronic 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,

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debtors will be asked if they have considered seeking assistance from a money advice service such as the Citizens Advice Bureau (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 Procedure Rules will be implemented.

## **Further Information**

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

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

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## Annex A – 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, e.g. emergency Building Control works 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.

- A Reminder to Pay 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 an enforcement agent from 76 days (can vary depending on circumstances of each case) after the date of the invoice.
- If, after a maximum of 90 days with the enforcement agent, the debt has not been recovered in full or an instalment arrangement entered into, the debt is returned to the Council for further consideration including legal action.

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

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.

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## **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 Council's Legal Team.

If the debtor owns property it may be possible to place a Land Registry Charge on the property. Again, in such instances guidance will be sought from the Council's Legal Team.

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### ANNEX B – Council Tax Recovery Policy

#### Foreword

In accordance with the provisions of the Local Government Finance Act 1992 the Council is responsible for levying and collecting all Council Tax that is payable on all occupied and unoccupied domestic properties, which are not exempt and situated in the borough.

In order to ensure arrears are kept to a minimum, it is essential that the Council operate an effective and efficient approach to the collection of Council Tax monies using the methods determined by legislation and regulation.

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

The collection and enforcement of Council Tax is governed by the Council Tax (Administration and Enforcement) Regulations 1992. It is important that anyone who does not pay their Council Tax by the due date is pursued for payment quickly.

Reminder notices, final notices and summonses are issued in accordance with the recovery timetable approved each year by the Director of Finance and Transformation.

- When a payment is missed, an Instalment Reminder letter will be sent 14 days after the instalment becomes due.
- If the account is brought up to date and then a second instalment is missed, a second reminder letter is sent.
- If the second instalment is brought up to date and then a third instalment is missed, a Final Notice is sent requesting the full outstanding balance for the year.
- A summons will be sent following a reminder or a second reminder or a final notice if the account is not brought up to date. Explanatory notes will be issued with the summons notice explaining the implication of Council Tax Enforcement.

Information regarding the availability of discounts, exemptions and council tax reduction is available on the Council's website.

Where taxpayers have contacted the authority to make a payment arrangement every attempt will be made to clear outstanding arrears by the end of the financial year 31 March.

If the resident contacts the Council and agrees an arrangement to pay following a summons, the resident's employer details will be captured and retained where possible.

Should the case reach court, the Council will make an application for a Liability Order at the hearing.

Staff attending court will assist defaulters who may choose to attend court for the Liability Order hearing and ensure they have a written breakdown of summons and liability order costs available. They will also ensure they are equipped with a supply of CTRS (council tax reduction scheme)/Single Person Discount forms etc. In order to provide assistance to

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complete forms and assess potential entitlement to CTRS/ Housing benefit, the taxpayer will be encouraged to ring the Council to discuss their case.

A Council Tax Notice of Liability Order and information request with details of the possibility of Enforcement Agent action will be issued to the taxpayer within 3 working days of the court hearing.

If the information request is not returned, the case will be passed to Enforcement Agents for recovery action. Fourteen days' notice must be given prior to carrying out this action.

An Attachment of Earnings Order (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.

An employer is bound by law to action a local authority request to apply an attachment to earnings in respect of a liability order granted under relevant Council Tax legislation. An employer who fails to set up such an attachment will first be reminded but ultimate failure to carry out this action will result in prosecution.

Where information about relevant benefits is provided, an attachment to benefit will be arranged to recover the outstanding debt. Should the authority be unsuccessful in arranging attachment to earnings or benefits, the case will be passed to Enforcement Agents for recovery action.

Should the debt fail to be recovered through the use of the Enforcement Agents, appropriate action may be taken from the following options:

1. Prosecute for potential committal;
2. Charging Orders to be applied for;
3. Petition for Bankruptcy and in appropriate cases apply for an order for sale of the property.

### **Enforcement Agents**

Before the Council instructs an Enforcement Agent, the resident will be sent a final warning letter informing the resident that the Council is about to instruct an Enforcement Agent to recover council tax monies that are due and inform them of the costs involved.

When the services of Enforcement Agents have been determined, an agreement will exist along with formal written procedures specifying the standard of service to be provided and will cover the following matters:-

- The initial Enforcement Agent visit will be expected to be within 10 working days of receipt of the case.
- Where no contact has been made within office hours then at least one visit will take place outside normal working hours before the case is returned for alternative action.
- Cases will only be returned by Enforcement Agents after at least three unsuccessful visits have been made
- There will be specific procedures for the removal of goods.
- There will be agreed provision for the security of money collected in the form of bond or client account.

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- A joint signatory account will be set up for external Enforcement Agents to pay in all collections requiring an authorised signatory for the withdrawal of the Enforcement Agents portion of fees.
- The authority should be able to access the external Enforcement Agents' system via a link in order to make enquiries.
- Where an arrangement does not exist between the authority and Enforcement Agents, the Enforcement Agent will not retain the case for longer than a maximum of 12 months.
- Money collected by the Enforcement Agents will be paid to the authority on a weekly basis.

### 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 Enforcement Agents, it is not the Council's practice to intervene in discussions between the Enforcement Agents and the debtor as to collection of the debt. The Council may 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 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.

### Costs

Costs may be cancelled where:

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- the Magistrates' Court has ordered their cancellation; or
- 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
- there is evidence of extreme hardship; or
- a senior officer of the Council has agreed to their withdrawal.

The amount of the costs is not negotiable.

### Debt Counselling

If someone has contacted a debt counselling agency (e.g. Step Change, 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. The Council is aware of the national "breathing space" arrangements for those in difficulty with financial debts and will abide by those requirements.

If a case is already with the Enforcement Agents by the time the debtor seeks advice, they will be contacted and made aware of the debtor's circumstances and the case will be put on hold until we receive the update from the debt counselling agency.

Having done this, if we are not contacted by the debt counselling agency the Enforcement Agent will be requested to ascertain whether there are sufficient goods on which to levy.

### Committals

When the Authority has tried all other recovery options it will only list unpaid Council Tax cases for committal which exceed the minimum value which is considered by the authority as economical to pursue.

The council will send pre-committal warning letters (pending warrant letter) prior to commencement of proceedings allowing the taxpayer the opportunity to make payment by other methods.

If after 14 days no contact or payment is made the Council will complete Committal Approval Documents, which must be approved by Senior Officer.

If approved, the Council will apply to the Magistrates Court for a Bail Warrant instructing the taxpayer to attend Court at times and dates as specified by the Court.

Once granted by the Court, the Bail Warrant is passed directly to the Enforcement Agent for execution.

The authority shall charge costs up to the statutory maximum at the time of issuing a Committal Warrant to cover admin costs.

Evidence/cases will be presented in court in line with the Council's procedure. The Magistrates will conduct a Means Enquiry to assess if the tax payer is guilty of wilful refusal or culpable neglect. They can commit to prison for a maximum of 90 days per liability order or suspend with a payment order/ remit all or part of the total debt.

Should the taxpayer not attend the Court hearing, a Warrant without Bail will be applied for, together with appropriate costs. This involves arresting the taxpayer and bringing them to Court immediately.



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If a Court Order Payment Plan is not adhered to a Section 18 Notice will be issued requiring the taxpayer to attend Court. This notice must be either hand delivered to the taxpayer (requiring a witness statement of service) or sent by recorded delivery. Once a suspended committal sentence has been imposed and the payment plan has been defaulted on, a committal warrant can be applied even in the taxpayer's absence. Any such application requires approval from a Senior Officer.

### 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 "Recovery Procedure for Selecting Cases for Bankruptcy or Charging Order".

### 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:

- the general good of the community, taking into account factors such as the appearance of the area; or
- the desire to bring an empty property onto the market and available for occupation; or
- the prevention of an ever-accumulating debt.

### Irrecoverable Debts/Write Offs

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:

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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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## Vulnerable persons policy

We recognise that certain groups of customers may be vulnerable. These groups may include, but are not restricted to:

- Pregnant women or recent parents
- Long term sickness, serious illness or frailty
- Elderly
- Physical disability
- People with learning difficulties, or mental health problems
- Recent bereavement
- Severe financial difficulties and/or Income Support, Jobseeker's Allowance, Pension Credit or Employment Support Allowance
- Customers with communication difficulties
- Customers with a history of alcohol or drug misuse
- Victims of domestic violence

Not all people in these groups may be vulnerable, but we will consider your individual circumstances if we know about your vulnerability.

## What We Will Do

- We will work with you to agree the best method of recovering outstanding arrears and the easiest way for you to pay.
- We will clearly mark your records that you are a vulnerable person when vulnerability has been identified.
- We will carefully consider each case where vulnerability has been identified before taking any recovery action.
- We will not take action such as bankruptcy, charging order or committal on any case where vulnerability has been identified before we make an appointment with you.
- We will adapt our recovery process where we are aware that a customer is vulnerable to minimise any hardship or distress.
- We will clearly explain our decisions regarding our action and our reasons for refusing any requests.
- We will signpost our customers to any help that we consider may be useful in their circumstances.

## What You Should Do

- You must tell us of your vulnerability at the earliest opportunity. We may ask you to provide some evidence, such as a doctor's letter, to establish the nature of your vulnerability. This is to ensure that we are clear on any particular needs you may have so we can help you.
- You should complete an Income and expenditure form to give us an accurate picture of your financial situation.
- If you want someone to discuss the account on your behalf you will need to write to us confirming who can deal with the account.
- You should keep us informed of any changes to your circumstances and any address change.
- You will keep to any appointments scheduled or contact us if you cannot attend.
- You should make any payments you have offered whilst we are considering your offer.
- You should review any services that our officers may signpost you to so you can decide if they are relevant to your circumstances.

We will try to help you if you are in arrears and have a vulnerability but can only do so if we know your circumstances.

You can call us on 01732 876388 or email [revenues@tmbc.gov.uk](mailto:revenues@tmbc.gov.uk)

You can also write to us at:

Tonbridge & Malling Borough Council  
Council Tax Recovery Section  
Gibson Building  
Gibson Drive  
Kings Hill  
West Malling  
Kent ME19 4LZ

# Tonbridge & Malling Borough Council

## Corporate Debt Recovery Policy

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

#### Foreword

Schedule 7 (part 1) Local Government Finance Act 1988 provides that the multiplier is set by the Secretary of State. The Valuation Office (an agency of HM Revenue & Customs) provides the rateable value of all non-domestic hereditaments. The Council is responsible for levying and collection of Non Domestic Rates payable on all occupied and unoccupied hereditaments, which are not exempt and situated in the borough.

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 (Finance and Transformation).

- When a payment is missed, an Instalment Reminder letter will be sent 14 days after the instalment becomes due.
- If a second instalment is missed, a Final Notice is sent requesting the full outstanding balance for the year.
- A summons will be sent following a reminder or a final notice if the account is not brought up to date. Explanatory notes will be issued with the summons notice explaining the implication of NNDR enforcement.

Following the hearing of summonses by the Magistrates, pre-Enforcement Agent 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 Enforcement Agents 14 days after the issue of pre-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 Enforcement Agents, it is not the Council's practice to intervene in discussions between the Enforcement Agents and the debtor as to collection of the debt. The Council will intervene in exceptional circumstances, by, for example, coming to

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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.

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.

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### Enforcement Agents

Once the Council has passed a debt to its Enforcement Agents for collection, the Enforcement Agents 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 Enforcement Agents will be referred to the Enforcement Agents.

The Council wishes to ensure that its Enforcement Agents are acting within the law and in accordance with the standards expected by the Council. Any evidence of malpractice by the Enforcement Agents will be investigated by the Council.

The Council will not seek to interfere with the level of fees charged by the Enforcement Agents, unless it appears that they are not legally correct.

The Council will withdraw a case from the Enforcement Agents if:

1. it was sent to the Enforcement Agents 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.

### Debt Counselling

If someone has contacted a debt counselling agency (e.g. Step Change, 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. The Council is aware of the national "breathing space" arrangements for those in difficulty with financial debts and will abide by those requirements.

If a case is already with the Enforcement Agents by the time the debtor seeks advice, the case will be left with the Enforcement Agents until he has been able to ascertain whether there are sufficient goods on which to levy. The Enforcement Agents will be contacted and made aware of the debtor's circumstances. Having done this, the Enforcement Agents will be requested to cease further 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 "Recovery Procedure for Selecting Cases for Bankruptcy or Charging Order".

### 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.

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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 (Sole Trader). This action cannot be taken against a company.

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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### ANNEX D - Housing Benefits Overpayment Policy

#### Introduction

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.

The majority of Housing Overpayments are recoverable. A recoverable Housing Benefit overpayment must always be recovered from the claimant and/or person to whom it was paid. Some debts are irrecoverable, for example, those caused by Official Error where the claimant could not reasonably have known that they had been overpaid or where they had not contributed to the error.

#### 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.

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### Causes of overpayments

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

- notification of a change of circumstances after the change has occurred; failure by a claimant to notify a change of circumstances;
- 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;
- the death of a claimant, or
- from errors made by staff of the Department for Works 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 staff.

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 (Finance and Transformation). The Council's Financial Procedure 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 (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;
- 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. This applies in specific 'blameless tenant' circumstances such as when the tenant has died or moved address.
- Recovery from debt collection agency
- Direct Earnings Attachment

### 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 2021 the standard rates are:

- a) £18.75 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 or they have agreed to pay a penalty under Section 45A of the Administration Act and the agreement has not been withdrawn; and
- b) £11.25 in other cases.

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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.

### **Direct Earnings Attachment (DEA)**

From 8 April 2013 the Social Security Act 1992 was amended allowing Local Authorities to recover overpayments by attachment to earnings without the need to obtain a Court authority.

Where the debtor has not made an arrangement to repay the overpayment and it is found that they are working for an employer, the Local Authority will issue a DEA order to the employer instructing repayment at the appropriate rate as per the net earnings.

### **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 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.

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### **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 (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:

- 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;

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- 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 (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 the value based action plan table below.

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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### Value based action plan

Amount	Recovery action sequence	Write off action
£0 to £1	No action.	Submit to Director (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 (Finance and 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 (Finance and Transformation) for write off as uneconomic to pursue when debt collection agency return the debt as uncollectable ( no payment arrangements)
£500.00 to £5,000.00	<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 the 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 Enforcement Agents, consider insolvency.</li> </ul>	Submit to Director (Finance and 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 )
£5,000.01 and greater.	As for over £500.01.	Submit to FIPAB via Director (Finance and 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.

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### ANNEX E - 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 Managers 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 can be 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 (TEC) 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.
- 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 (TPT), will be sent to the Council's Enforcement Agents 36 days after the issue of an Order of Recovery.



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### 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 (PCN) is involved, the arrangement will endeavour to clear cases at the most advanced stage of enforcement first.
- All PCNs included in an arrangement will be placed "on-hold" and will not escalate further unless the arrangement is broken.
- Once an arrangement has been reached, additional, newly acquired PCNs cannot be added and must be addressed in the normal manner.
- 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 Enforcement Agents 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 Enforcement Agents and the debtor, as to the collection of the debt although it would expect the Enforcement Agents 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.
- The Council is aware of the national "breathing space" arrangements for those in difficulty with financial debts and will abide by those requirements
- If the approach is made after the case is already with the Enforcement Agents then the Enforcement Agents will be advised of the circumstances and requested to cease further action until both the Council and the Enforcement Agents 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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### Enforcement Agents

- The Council will only use Enforcement Agents 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 Enforcement Agents are acting within the law and in accordance with the standards expected by the Council. Any evidence of malpractice by the Enforcement Agent will be investigated fully by the Council.
- Once the Council has passed a debt to its Enforcement Agents for collection, the Enforcement Agents 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 Enforcement Agents will be referred to the Enforcement Agents.
- The Council will not seek to interfere with the level of fees charged by the Enforcement Agents, 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 Enforcement Agents if in the opinion of a Senior Officer there are exceptional circumstances, or on the advice of the Enforcement Agents.
- The Council will maintain regular contact with the Enforcement Agents 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 Enforcement Agents in all cases.
- The Council will seek to engage a minimum of two Enforcement Agents to encourage maximum performance and offer flexibility where necessary. Each Enforcement Agent 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.

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## Corporate Debt Recovery 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 Enforcement Agents 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