

# **Sandwell Metropolitan Borough Council**



## **Corporate Debt Recovery Policy**

**2026/27**

## 1. INTRODUCTION

- 1.1 This document details the Council's policies on the billing, collection and recovery of monies due to the Council. Sums due to the Council can be a mixture of statutory and non-statutory charges. The methods for billing and recovery of the statutory debts are tightly prescribed by statute.
- 1.2 This Policy sets out the general principles to be applied in relation to debt management across all services provided by the Council.
- 1.3 It is essential that all monies due are collected effectively by the Council and that debts owed are kept to a minimum. This is because the Council has both a legal duty and a responsibility to ensure that income due is paid promptly to protect services being provided to our residents.
- 1.4 The management of income is a key business area for the Council. The Council collects income from many streams; some of this activity is governed by legislation while others by sound principles of financial management. The key to economic, efficient, and effective income management is the creation and maintenance of a clear framework that sets out the approach, principles, and strategy within which all activities will be conducted.
- 1.5 This policy also recognises that collection of debt should be fair to everyone, especially those on limited incomes who struggle to pay or those who have not paid because of an oversight. It is also recognised that some people deliberately avoid their payment obligations by delaying their payments or choosing not to make payment and proportionate measures will be deployed

to develop a culture of payment while encouraging those in need of help to get in touch with the Council at an early stage so that appropriate support or advice can be given.

1.6 Where a person or organisation makes contact to discuss payment difficulties, their circumstances will be considered fairly and objectively with a view to agreeing a reasonable payment arrangement, minimising recovery action, and avoiding potential additional costs. Where appropriate the Council may signpost those who are in severe financial difficulties to its own welfare team or independent financial support and/or organisations who can help with claiming benefits that might be available. Where people or organisations fail to make contact or maintain their payment obligations, recovery action will continue in the wider public interest.

1.7 Underpinning this policy are effective income management processes critical to the delivery of overall Council objectives, as every pound of income that is not collected or takes extra effort to collect, ultimately leads to additional financial pressures on the Councils budget.

1.8 This policy applies to the collection of:

- Council Tax Policy (**Appendix 1**)
- Non-Domestic Rates Policy (**Appendix 2**)
- Housing Benefit Overpayment Recovery Policy (**Appendix 3**)
- Sundry Debt (Council Services) Policy (**Appendix 4**)
- Bankruptcy Policy (**Appendix 5**)
- Write-Offs Policy (**Appendix 6**)

1.9 This policy intends to:

- Recover all money outstanding in respect of debts owed to the Council.
- Protect the Council's finances for the good of all residents within the Sandwell area.
- Ensure that proportionate and appropriate enforcement action is taken to recover debts.
- Facilitate a coordinated approach to managing multiple debts owed to the Council.
- Ensure that the Council engages with debtors when enforcing debts to take the appropriate action considering the individual circumstances of the debtor.
- Identify, where appropriate, support which may be required to those

- owing money to the Council;
- Giving specific considerations to vulnerable customers where appropriate.
  - Apply best practice to debt collection.
  - Minimise and manage the risk of bad debts.

## 2. GENERAL PRINCIPALS

- 2.1 All directorates will work together to ensure the most appropriate arrangement for recovery of debts is achieved. In cases of multiple debts, a lead officer may be appointed. The lead officer will be responsible for liaising with relevant service areas. To assist Sandwell Council is working towards a Single View of debt across all recovery areas.
- 2.2 In all cases the Council will work with the debtor taking account of their individual circumstances in order to arrive at an arrangement that is reasonable to both themselves and the Council.
- 2.3 A flexible approach will be adopted to ensure the debtor is able to make and maintain regular payments. This reduces the risk of further action and unnecessary additional costs becoming payable, it also maintains collection. The Council will seek to review the debtors circumstances periodically to ensure arrangements are still appropriate.
- 2.4 Where necessary when working with debtors the Council will provide additional support with the aim of maximising their income by: -
- Providing welfare advice to ensure the debtor is receiving any benefits, reductions, and discounts they are entitled to.
  - Promoting and referring debtors to agencies who can offer personal budgeting support / debt advice / affordable credit.

## 3. PRINCIPLES OF RECOVERY ACTION

- 3.1 The Council will ensure that: -
- Any recovery action taken will be proportionate
- This allows for a balance to be struck between the potential loss of income due to the Council and the costs of compliance.
- The approach taken will be consistent

Consistency means taking a similar approach in similar circumstances to achieve similar objectives. The Council aims to achieve this in the advice given, the use of its powers and the recovery procedures used. At the same time, the Council recognises the need to treat everyone as individuals and therefore will aim to take account of many variables such as circumstances of the individual including any vulnerabilities, the payment history, and their ability to pay.

- The actions taken will be transparent

Transparency is important in maintaining public confidence in the Council. It means that helping people to understand what is expected of them, to meet their payment obligations and what they should expect from the Council. It also means clearly explaining what actions the Council might take if payment is not made and the reasons for taking any recovery action.

### 3.2 The Council will also work with the voluntary sector and advice agencies, where we collectively:

- Acknowledge that there is a distinction between can't and won't pay

The policy will ensure fairness in accepting that every debtor has an obligation to repay their debt owed to the Council so that future services do not suffer. Those who pay promptly should not subsidise those who are not prepared to pay what they owe.

- Recognise that advice and early intervention is a key element from the perspective of all partners.

The policy will ensure that the Council will engage with and its partner organisations will treat all debtors fairly and, where possible they will promote free debt advice services and early engagement with debtors. Where appropriate, payment agreements will be put in place to assist debtors in adverse financial circumstances. The decision to agree a repayment timetable will be influenced by the willingness of the debtor to take advantage of the debt advice at an early stage.

- Acknowledge that financial capability and vulnerability are sometimes underlying issues around non-payment.

The policy will seek to promote financial inclusion and early intervention by recognising that debtors may have underlying problems with money management or may not be receiving all the financial assistance to which they are entitled.

- 3.3 In all cases, consideration will be given to the value of the outstanding debt and the cost of recovering that debt and where the Council believes it is uneconomical to pursue recovery the debt may be recommended for write off.

## 4. Policy Aims and Objectives

4.1 The key aims are to:

- Ensure the Council issues bills promptly and in line with legislative requirements to remind people quickly if they do not pay.
- Offer efficient and flexible payment methods
- Encourage people who are facing difficulties in paying to make early contact to avoid the build-up of debt
- Inform people of their entitlement to benefits, discounts and exemptions to ensure maximum take-up and ensure that bills/liabilities are accurate
- Inform people of the general availability of income related benefits such as Universal Credit, Pension Credits, Housing and Council Tax Reduction by using the appropriate welfare channels and to promote technology available such as our benefits calculator.
- Take positive action to prevent arrears from occurring in the first place, maximising income, and entitlement at an early stage
- Take robust recovery action against deliberate non-payers or those who delay payment without genuine reason while always working to identify and assist those who genuinely can't pay or are finding it difficult to pay

- Where people have fallen or are likely to fall into arrears, a commitment to work with them and their representatives to set reasonable and realistic payment levels that they can maintain, ensuring that payment arrangements reflect the ability to pay as well as the level of debt owed
- Work in a co-ordinated approach with multiple debts owed to the Council. Priority will be given to debts where non-payment could lead directly to the loss of a person's home in the case of non-payment of housing rent. Other debts owed to the Council may, depending on the circumstances, be treated to as a lower priority until payment of the priority debt owed to the Council is made
- Work in partnership with recognised advice agencies to advise people who need help and guidance to repay debts where they can get independent advice from to assist with wider financial problems

## 5. PRINCIPALS OF ENFORCEMENT ACTION

- 5.1 Where a debt remains outstanding for a service provision and there is no statutory obligation to provide the service, consideration will be given to terminating the service until such time that the debt is bought up to date.
- 5.2 Costs incurred are the responsibility of the customer, the aim of the policy is to minimise such costs wherever possible.
- 5.3 Payment orders made by a Court will take priority over any informal payment arrangement
- 5.4 We will utilise all methods of recovery available.
- 5.5 Enforcement agents and debt collection agencies instructed by the Council will be required to work within agreed guidelines, legislation and Codes of Practice always.

## 6. POLICY REVIEW

- 6.1 The policy will be reviewed annually, or sooner if appropriate, to take account of operational adjustments, feedback and or changes to legislation.

## 7. EQUALITIES

- 7.1 This policy has been produced in line with the Council's obligation to the Public Sector Equality Duty provided by the Equality Act 2010. No adverse impact on any protected characteristic has been identified as a result of this policy.

## 8. VULNERABLE CUSTOMERS

- 8.1 We understand that there are members of our community that may be considered vulnerable, therefore require additional support. Being vulnerable does not mean that you will not have to pay anything that you are legally obliged to pay.

Where we identify someone as being vulnerable, consideration should be given to:

- Structuring repayments over a longer period to pay
- Holding off enforcement action for an agreed period
- Assisting with the debtor to claim the right benefits, reductions, discounts or any other entitlement
- Referring a debtor to our Welfare Rights team if appropriate and sources of independent advice services
- Agreed temporary payment arrangement with lower repayments with a review date

We are aware that a taxpayer's vulnerability status may be temporary or permanent in nature but will vary widely. In order to aide us in identifying a vulnerable person we have a list below, identifying some characteristics of a vulnerable person. However, each case must be taken on its own merit:

- Disabled Person
- People experiencing serious illness, including mental illness
- People aged under 18
- Elderly people
- People in late stages of pregnancy
- People dealing with a bereavement

## 9. Appendices

### APPENDIX 1 - Council Tax Policy

#### 1.0 Introduction

1.1 This document explains the Revenues Service approach to administering the billing, collection and recovery of Council Tax as laid down by the Local Government Finance Act 1992 and all other supporting legislation. The document details information about the billing and recovery processes. The intention is to explain the processes clearly to show the transparent nature of the work, rather than give a detailed analysis of the legislation involved.

#### 2.0 The Billing Process

2.1 The Council recognises that providing a correct and prompt bill maximises the likelihood of helping customers pay on time, and it strives to achieve this. The Council also aims to offer helpful advice face-to-face, in writing, by e-mail, online chat, over the phone and through advice on the website.

2.2 All available discounts, exemptions, valuation band changes, and Council Tax reduction will be granted in appropriate cases at the earliest possible time to ensure the amount owed is correct.

2.3 Discounts, exemptions and reliefs will be reviewed periodically engaging external contractors and utilising third party data where appropriate and lawful, however it remains a customer responsibility to inform the Council within 21 days of any changes in their circumstances that may affect their entitlement to any reduction in their charges.

2.4 Clear information regarding reductions, reliefs, including benefits, is widely available through leaflets that are provided with annual bills and through the website. Officers are trained to advise customers about the range of benefits, discounts, and exemptions available and how to make claims.

2.5 Where there is a joint occupation or ownership, for example joint tenants or owners, or partnerships like husband and wife, both are expected to pay the charge. All bills and other correspondence will be addressed to all the liable persons for the charge. The law says that each person will be liable both for their own share of the charge and for the whole charge (called "jointly and severally liable"), so if necessary action for recovery of the debt will be taken against any or all of the liable persons.

2.6 If a taxpayer disputes the basis of why or what they have been charged in relation to Council Tax, the Council will advise them of their appeal rights by initially writing to the Council or alternatively by seeking redress at the Valuation Tribunal.

2.7 Council Tax is charged for financial years beginning on 1st April and ending on 31st March the following year. Ratepayers who receive an annual bill during March will normally receive ten monthly instalments payable between April and January inclusive, but the Council also welcome ratepayers to pay over 12 months. As the financial year progresses, less months are available, so the number of instalments reduces. Between 1st May and 31st December, the number of instalments allowed for the year's charge is the number of whole months less one. New bills created from January will usually be given one instalment payable within 14 days from the date of the bill. Where a retrospective period is billed late in the financial year the Council will consider an arrangement over a longer period if the taxpayer engages with the service.

### **3.0 The Recovery Process**

3.1 The Council only must prove recovery documents are issued in time and in line with regulations; it is not necessary to prove customers have received them.

3.2 As Council Tax is a statutory charge, it is very important that ratepayers give them a high priority when looking at their finances. If monthly instalments are paid late, or not at all, the Council will take action to recover the overdue amounts by sending documents that explain the consequences of delaying or not making payment. Ratepayers are actively encouraged to contact the Council without delay if they experience difficulties in paying their bill.

3.3 The Council has a planned annual recovery and enforcement timetable that sets out the dates for the issue of all recovery documents including reminders, final notices, and summonses. It also details magistrates' court hearing dates and targets for transmitting accounts for further recovery action using Enforcement Agents. The enforcement taken will be:

## **Reminders and Final Notice Stage:**

3.4 Apart from any accounts issued near the end of a financial year, all bills include a monthly instalment scheme. It is a taxpayer's responsibility to make sure that instalments are paid on time. If ratepayers do not pay, or if they make occasional or irregular payments that are not received on or by the due date, they will be considered overdue. If this happens, recovery action will be taken, initially in the form of a **1st Reminder Notice**.

3.5 Legislation allows for reminders to be sent immediately after an instalment is due, but the Council will usually allow ratepayers 12 days after a payment has become overdue before issuing a 1st reminder.

3.6 If an overdue instalment is subject to a 1st Reminder Notice, a taxpayer is required to make payment in full of the overdue instalment within 7 days. If payment is made as required, future instalments can then be paid as shown on the bill.

3.7 If the overdue instalment is paid, but a future instalment is not paid on time a 2nd Reminder Notice will be issued. If payment is made as required, future instalments can then be paid as shown on the bill. The second reminder states clearly that no further reminder notices will be sent if future instalments are not paid on time.

3.8 If payment is not made within 7 days following the issue of a 1st or 2nd reminder notice, after a further seven days a Final Notice will be sent for the full amount outstanding for the year.

3.9 Additionally, a Final Notice will also be issued if part or all of an instalment is overdue for a third time. This requires the full annual charge that is outstanding, rather than just the overdue instalment, to be paid within seven days. If payment is not made as required a summons will be sent for the full amount outstanding for the year together with associated costs of £84 for the issue of the summons.

3.10 Dependent on how promptly ratepayers pay, no more than two reminders and one final notice will be issued in a financial year before a summons is issued. Where the right to pay by instalments is lost due to consistent late payment, or no

payment, this will only be forfeited for the current financial year; the right to pay by instalments will be reinstated when subsequent years' charges become due.

3.11 Reminder and Final Notices confirm the full range of payment methods available and include information to encourage ratepayers to get in touch with the Council to discuss payment difficulties. The Council will, where appropriate, re-instate a taxpayer's instalment scheme where the taxpayer has agreed to bring the account up to date and switch to payment by direct debit for payment of future payments.

3.12 The Council will normally only offer to re-instate instalments once in any financial year following the issue of a final reminder. The Council recognises the offer to re-instate instalment may help a ratepayers meet financial obligations, but at the same time, the ratepayers previous payment history will be considered to ensure habitual late payers are not continually given the opportunity to delay payment.

### **Summons Stage:**

3.13 In the event of late or non-payment as explained above, the Council will issue a Summons at the Magistrates' Court, giving at least fourteen days' notice of the hearing date. The summons will confirm the charge outstanding together with court costs that are added to the amount payable in recognition of the extra work needed to secure payment. The additional costs charged for a summons are currently £84 for Council Tax.

3.14 The summons will confirm the date and time of the Magistrates Court hearing at which the Council's officer will need to satisfy the Magistrate that the customer is the liable person, does owe the amount outstanding, and that the Council has sent the correct documents to the customers' current or last known address.

3.15 Ratepayers who pay the full amount confirmed on the summons, including the additional costs for ratepayers before the hearing date do not have to attend court, however any payment arrangement made following the issue of a summons which extends payment beyond the liability order court hearing date will be made on the basis that the application for a liability order will continue and will include the initial £84 court costs for Council Tax and additional costs of £0.50 for the issue of a Liability Order (i.e. a total of £84.50 costs for Council Tax).

3.16 Attendance at the Magistrates Court is not compulsory, and usually the majority of customers summonsed do not attend. A taxpayer can dispute the charge or speak to the Court. The Court will give an audience to anyone who wishes to appear, however, unless the taxpayer has a valid defence then the Court is obliged to grant a Liability Order. See <https://www.sandwell.gov.uk/council-tax/legal-defences-issue-liability-order>

### **Liability Order stage**

3.17 Following the issue of a Liability Order, the Council will write to the taxpayer or ratepayer to secure full payment or to make a suitable payment agreement. The notification will also provide details of potential consequences of enforcement action (and additional enforcement costs) if the taxpayer does not make payment or fails to make a payment agreement. For Council Tax matters, the Council will also request to a taxpayer complete a 'statutory request for information', with details of their employment details, and if appropriate, information about any benefit they are receiving. Ratepayers are required to complete and return the statutory request within 14 days.

3.18 The Council will enter into a payment agreement with a taxpayer or ratepayer using the first principle that the outstanding balance must be paid in full prior to the end of the financial year, although in cases where there is no ongoing liability, payment agreements may be extended beyond the end of the financial year, depending on the circumstances of the case.

3.19 Following the issue of a Liability order and in the event of the taxpayer not returning the 'statutory request for information' or failing to make a payment agreement, the recovery action to be taken will be dependent on the circumstances of each individual case and with due regard to the most effective way for the Council to collect the outstanding sums:

**Attachment of Earnings** – Attachments require an employer of the taxpayer (for Council Tax only) to deduct a set percentage of the earnings and send them directly to the Council to pay the outstanding Liability Order. The amount of money deducted depends on how much is earned and whether the person is paid weekly or monthly. The deductions are governed by Council Tax regulations.

**Attachment from Income Support, Job Seekers Allowance, Universal Credit and Employment Support Allowance** – Attachments require the Department of Work and Pensions to make deductions from the taxpayer's benefit. The level of deduction is fixed by the Government but does increase annually.

**Attachment of Members Allowances** – The Council may make an attachment of the allowances of an elected member.

**Taking Control of Goods & Use of Enforcement Agents** – Enforcement Agents contracted by the Council may be used where no attachment is possible or suitable. The Enforcement Agents will always be required to comply with the Taking Control of Goods Regulations 2014 and other relevant legislation.

Initially, if a debt has been passed to an enforcement agent a fixed fee of £75 for each liability order will be incurred. This is known as the compliance stage and ratepayers are encouraged to make early contact with the Enforcement Agents within 10 days to pay the amounts due in full or set up a realistic repayment plan.

If ratepayers fail to engage or set up a repayment plan at the compliance stage, the liability order(s) will be passed for a visit to be undertaken by an agent. If the Enforcement Agent is required to visit there is a fixed fee of £235 plus 7.5% for any balance due above £1,500.

The enforcement agent will normally ask ratepayers for payment in full, however the enforcement agent will normally also enter into a Controlled Goods Agreement which also provides ratepayers with an opportunity to pay over a period of time.

If possessions are subject to a Controlled Goods Agreement these goods cannot be disposed or sold without the enforcement agents consent.

If ratepayers refuse to sign a Controlled Goods Agreement the enforcement agent can take goods to the value of the debt whilst at the property. There are additional costs of £110 plus 7.5% for any balance due above £1,500 if goods must be removed and sold.

If the enforcement agent decides the value of the goods is insufficient to pay the amount outstanding and there is no prospective of making payment agreement, or the taxpayer cannot be traced the enforcement agent will normally return the Liability Order to the Council which ends the enforcement agent action.

3.20 If enforcement agent action proves unsuccessful, the Council will then consider whether to take further recovery action, dependent on the specific personal and financial circumstances of each individual case and with due regard to the most effective way for the Council to collect:

**Charging Order** – For ratepayers owing £1,000 or more, the Council may apply to the County Court for an Order that places a charge on the taxpayer's property and the court, in certain circumstances, empowering the sale of the property if the taxpayer does not pay. The obtaining of a charging order does not prompt automatic payment of the amount outstanding; providing there is sufficient equity in the property value following the repayment of any outstanding mortgage or other existing registered charges, it secures payment of the debt when the property is sold. Before such action is taken, the Council will always send a final letter inviting the taxpayer to a pre-arranged meeting to make a payment agreement.

**Bankruptcy** – For ratepayers owing £5,000 or more, the Council may also consider taking bankruptcy action. Before such action is taken, the Council will always send a final letter inviting the taxpayer to a pre-arranged meeting to make a payment agreement. Bankruptcy will be considered, only as a last resort, in line with the policy in Appendix 5.

#### **4.0 Write Offs**

4.1 The Council recognises that where a debt is deemed to be irrecoverable, especially after all recovery options have been considered and/or taken, prompt write off of such debts is appropriate and good practice in certain circumstances and in line with the policy in Appendix 6.

## **APPENDIX 2 – Non-Domestic Rates Policy**

### **1.0 Introduction**

This document explains the Revenues Service approach to administering the billing, collection and recovery of Business Rates within the Local Government Finance Act 1988 and all other supporting legislation. The document details information about the billing and recovery processes. The intention is to explain the processes clearly to show the transparent nature of the work, rather than give a detailed analysis of the legislation involved.

### **2.0 The Billing Process**

2.1 The Council recognises that providing a correct and prompt bill maximises the likelihood of helping customers pay on time, and it strives to achieve this. The Council also aims to offer helpful advice face-to-face, in writing, by e-mail, online chat, over the phone and through advice on the website.

2.2 All available discounts, exemptions, rateable value changes, and Non-Domestic Rates reduction will be granted in appropriate cases at the earliest possible time to ensure the amount owed is correct.

2.3 Discounts, exemptions and reliefs will be reviewed periodically engaging external contractors and utilising third party data where appropriate and lawful.

2.4 Clear information regarding reductions and relief is widely available through leaflets that are provided with annual bills and through the website. Officers are trained to advise customers about the range of discounts and exemptions available and how to apply.

2.5 All bills and other correspondence will be addressed to all the liable persons for the charge.

2.6 If a taxpayer disputes the basis of why or what they have been charged in relation to Non-Domestic Rates, the Council will advise them of their appeal rights by initially writing to the Council or alternatively by seeking redress at the Valuation Tribunal.

2.7 Business Rates is charged for financial years beginning on 1st April and ending on 31st March the following year. Ratepayers who receive an annual bill during March will normally receive ten monthly instalments payable between April and January inclusive, but the Council also welcome ratepayers to pay over 12 months. As the financial year progresses, less months are available, so the number of instalments reduces. Between 1st May and 31st December, the number of instalments allowed for the year's charge is the number of whole months less one. New bills created from January will usually be given one instalment payable within 14 days from the date of the bill. Where a retrospective period is billed late in the financial year the Council will consider an arrangement over a longer period if the taxpayer engages with the service.

### **3.21 The Recovery Process**

3.22 The Council only must prove recovery documents are issued in time and in line with regulations; it is not necessary to prove customers have received them.

3.23 As Business Rates is a statutory charge, it is very important that ratepayers give them a high priority when looking at their finances. If monthly instalments are paid late, or not at all, the Council will take action to recover the overdue amounts by sending documents that explain the consequences of delaying or not making payment. Ratepayers are actively encouraged to contact the Council without delay if they experience difficulties in paying their bill.

3.24 The Council has a planned annual recovery and enforcement timetable that sets out the dates for the issue of all recovery documents including reminders, final notices, and summonses. It also details magistrates' court hearing dates and targets for transmitting accounts for further recovery action using Enforcement Agents. The enforcement taken will be:

## **Reminders and Final Notice Stage:**

3.25 Apart from any accounts issued near the end of a financial year, all bills include a monthly instalment scheme. It is a ratepayer's responsibility to make sure that instalments are paid on time. If ratepayers do not pay, or if they make occasional or irregular payments that are not received on or by the due date, they will be considered overdue. If this happens, recovery action will be taken, initially in the form of a **1st Reminder Notice**.

3.26 Legislation allows for reminders to be sent immediately after an instalment is due, but the Council will usually allow ratepayers 12 days after a payment has become overdue before issuing a 1st reminder.

3.27 If an overdue instalment is subject to a 1st Reminder Notice, a taxpayer is required to make payment in full of the overdue instalment within 7 days. If payment is made as required, future instalments can then be paid as shown on the bill.

3.28 If payment is not made within 7 days following the issue of a 1st reminder notice, after a further seven days a Final Notice will be sent for the full amount outstanding for the year.

3.29 Additionally, a Final Notice will also be issued if part or all of an instalment is overdue for a second time. This requires the full annual charge that is outstanding, rather than just the overdue instalment, to be paid within seven days. If payment is not made as required a summons will be sent for the full amount outstanding for the year together with associated costs of £84 for the issue of the summons.

3.30 Dependent on how promptly ratepayers pay, no more than one reminder and one final notice will be issued in a financial year before a summons is issued. Where the right to pay by instalments is lost due to consistent late payment, or no

payment, this will only be forfeited for the current financial year; the right to pay by instalments will be reinstated when subsequent years' charges become due.

3.31 Reminder and Final Notices confirm the full range of payment methods available and include information to encourage ratepayers to get in touch with the Council to discuss payment difficulties. The Council will, where appropriate, re-instate a taxpayer's instalment scheme where the taxpayer has agreed to bring the account up to date and switch to payment by direct debit for payment of future payments.

3.32 The Council will normally only offer to re-instate instalments once in any financial year following the issue of a final reminder. The Council recognises the offer to re-instate instalment may help a ratepayers meet financial obligations, but at the same time, the ratepayers previous payment history will be considered to ensure habitual late payers are not continually given the opportunity to delay payment.

### **Summons Stage:**

3.33 In the event of late or non-payment as explained above, the Council will issue a Summons at the Magistrates' Court, giving at least fourteen days' notice of the hearing date. The summons will confirm the charge outstanding together with court costs that are added to the amount payable in recognition of the extra work needed to secure payment. The additional costs charged for a summons are currently £118 for Business Rates.

3.34 The summons will confirm the date and time of the Magistrates Court hearing at which the Council's officer will need to satisfy the Magistrate that the customer is the liable person, does owe the amount outstanding, and that the Council has sent the correct documents to the customers' current or last known address.

3.35 Ratepayers who pay the full amount confirmed on the summons, including the additional costs for ratepayers before the hearing date do not have to attend court, however any payment arrangement made following the issue of a summons which extends payment beyond the liability order court hearing date will be made on the basis that the application for a liability order will continue and will include the initial £118 court costs for Business Rates and additional costs of £0.50 for the issue of a Liability Order (i.e. a total of £118.50 for Business Rates).

3.36 Attendance at the Magistrates Court is not compulsory, and usually the majority of customers summonsed do not attend. A taxpayer can dispute the charge or speak to the Court. The Court will give an audience to anyone who wishes to appear, however, unless the taxpayer has a valid defence then the Court is obliged to grant a Liability Order See <https://www.sandwell.gov.uk/council-tax/legal-defences-issue-liability-order>

### **Liability Order stage**

3.37 Following the issue of a Liability Order, the Council will write to the taxpayer or ratepayer to secure full payment or to make a suitable payment agreement. The notification will also provide details of potential consequences of enforcement action (and additional enforcement costs) if the taxpayer does not make payment or fails to make a payment agreement.

3.38 The Council will enter into a payment agreement with a taxpayer or ratepayer using the first principle that the outstanding balance must be paid in full prior to the end of the financial year, although in cases where there is no ongoing liability, payment agreements may be extended beyond the end of the financial year, depending on the circumstances of the case.

3.39 Following the issue of a Liability order and in the event of the taxpayer not returning the 'statutory request for information' or failing to make a payment agreement, the recovery action to be taken will be dependent on the circumstances of each individual case and with due regard to the most effective way for the Council to collect the outstanding sums:

**Taking Control of Goods & Use of Enforcement Agents** – Enforcement Agents contracted by the Council may be used where no attachment is possible or suitable. The Enforcement Agents will always be required to comply with the Taking Control of Goods Regulations 2014 and other relevant legislation.

Initially, if a debt has been passed to an enforcement agent a fixed fee of £75 for each liability order will be incurred. This is known as the compliance stage and ratepayers are encouraged to make early contact with the Enforcement Agents within 10 days to pay the amounts due in full or set up a realistic repayment plan.

If ratepayers fail to engage or set up a repayment plan at the compliance stage, the liability order(s) will be passed for a visit to be undertaken by an agent. If the Enforcement Agent is required to visit there is a fixed fee of £235 plus 7.5% for any balance due above £1,500.

The enforcement agent will normally ask ratepayers for payment in full, however the enforcement agent will normally also enter into a Controlled Goods Agreement which also provides ratepayers with an opportunity to pay over a period of time.

If possessions are subject to a Controlled Goods Agreement these goods cannot be disposed or sold without the enforcement agents consent.

If ratepayers refuse to sign a Controlled Goods Agreement the enforcement agent can take goods to the value of the debt whilst at the property. There are additional costs of £110 plus 7.5% for any balance due above £1,500 if goods must be removed and sold.

If the enforcement agent decides the value of the goods is insufficient to pay the amount outstanding and there is no prospective of making payment agreement, or the taxpayer cannot be traced the enforcement agent will normally return the Liability Order to the Council which ends the enforcement agent action.

3.40 If enforcement agent action proves unsuccessful, the Council will then consider whether to take further recovery action, dependent on the specific personal and financial circumstances of each individual case and with due regard to the most effective way for the Council to collect:

**Charging Order** – For ratepayers owing £1,000 or more, the Council may apply to the County Court for an Order that places a charge on the taxpayer's property and the court, in certain circumstances, empowering the sale of the property if the taxpayer does not pay. The obtaining of a charging order does not prompt automatic payment of the amount outstanding; providing there is sufficient equity in the property value following the repayment of any outstanding mortgage or other existing registered charges, it secures payment of the debt when the property is sold. Before such action is taken, the Council will always send a final letter inviting the taxpayer to a pre-arranged meeting to make a payment agreement.

**Bankruptcy** – For ratepayers owing £5,000 or more, the Council may also consider taking bankruptcy action. Before such action is taken, the Council will always send a final letter inviting the taxpayer to a pre-arranged meeting to make a payment agreement. Bankruptcy will be considered, only as a last resort, in line with the policy in Appendix 5.

## **4.2 Write Offs**

4.3 The Council recognises that where a debt is deemed to be irrecoverable, especially after all recovery options have been considered and/or taken, prompt write off of such debts is appropriate and good practice in certain circumstances and in line with the policy in Appendix 6.

## **APPENDIX 3 - Housing Benefit Overpayment Recovery Policy**

### **1.0 Introduction**

1.1 This policy document sets out Sandwell MBC's commitment to the recovery of Housing Benefit Overpayment in accordance with the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained State Pension Age) Regulations 2006

It is essential that Sandwell MBC demonstrates that it carries out recovery of Housing Benefit Overpayments efficiently and effectively.

By doing so the Council:

- Reduces losses to Public Funds
- Provides revenue for the Council
- Helps reduce the loss from overpayments

- Deters fraud and error
- Demonstrates commitment to accuracy and provision of a quality service to customers.

## **2.0 General Principle**

2.1 Overpayments are identified through a review of benefit entitlement, where the original decision is superseded or in rare instances the correction of an accidental error. They are amounts of benefit that have been paid to which there is no entitlement.

## **3.0 Prevention of overpayments**

3.1 We will endeavour to minimise the level of overpayments by:

- Paying Housing Benefit promptly;
- Actively encouraging customers to promptly report changes in circumstances.
- Undertaking targeted activities to identify undeclared changes.

Continuously reviewing and improving our systems and working practices;

## **4.0 Identification**

4.1 Accurate and prompt identification of overpayments is important to ensure we maximise the successful recovery of the overpayment and reduce the number of complaints and appeals.

To help identify overpayments the council will:

- Establish the cause of the overpayment and whether it is recoverable and from whom it should be recovered.
- Calculate underlying entitlement in all cases
- Ensure that every overpayment has been classified correctly,
- Notify the customer of the overpayment in accordance with current legislation
- Determine the best method of recovery.
- Not commence recovery until the individual has had the right to dispute the decision (in accordance with the timescales set out in the legislation).
- Offer help and advice to customers wishing to dispute the decision to recover the overpayment.
- In the event of being unable to recover an overpayment, promptly submit the debt for 'write-off'.

## **5.0 Recoverability**

5.1 If the overpayment was caused by misrepresentation or failure to disclose information, then the overpayment must be recovered from the person who misrepresented or failed to disclose that information.

If the overpayment was caused by official error it must be recovered from the person who at the time of receiving the payments, could reasonably have been expected to know that they were being overpaid.

An overpayment can be recovered from:

- The claimant
- The partner, if they were members of the same household at the time of the overpayment was created
- The person to whom the overpayment was paid

If a deceased person has an outstanding overpayment recovery can be sought from their estate.

## **6.0 Recovery from on-going Benefit**

6.1 Where the claimant is still entitled to Housing Benefit the overpayment should be recovered from their on-going entitlement.

The maximum deductions are provided by the government on an annual basis

Where the claimant's Housing Benefit includes an earnings disregard, a disregard for Charitable / Voluntary payments or a War Pension disregard, the Housing Benefit Regulations allow 50% of the statutory disregard to be added to the claw-back rate. (It does not include the additional earnings disregard)

However, a customer can request any alternative method of recovery or a reduction in the level of weekly deduction and each request would be considered on its own merits.

## **7.0 Where there is no on-going Benefit entitlement**

7.1 If there is no on-going benefit entitlement the overpayment will be recovered via an invoice after 31 days of an overpayment being created. This allows the customer to request a revision, appeal or make a new claim for Housing Benefit.

The invoice will request a first payment within 14 days from the date of the invoice. If the total overpayment is less than £60.00 the invoice will request the overpayment to be paid in one instalment. If the overpayment is over £60.00 that the overpayment will be split over 12 monthly instalments.

If the debtor is unable to pay in full or the instalment amounts it is possible to make alternative arrangement which will be covered in a later paragraph.

## **8.0 Methods of Payment**

8.1 It is essential to provide flexible and convenient methods of payment. At present the Council can accept payment by the following means:

- Direct Debit
- Online using our online payment system
- Credit / Debit card
- Via the Telephone Payment Line
- Standing order
- Cheque

- Cash

## 9.0 Non-Payment

9.1 If the customer fails to make a payment following an arrangement a reminder will be issued 20 days from the date of the original Invoice.

A final demand will be issued if still no payment is received after 40 days from the original invoice. The final demand will request a full payment of the Housing Benefit Overpayment within 7 days.

## 10.0 Arrangements

10.1 If the customer cannot pay the overpayment invoice or meet the instalment amounts in full, they are encouraged to contact the council immediately as it may be possible to make a payment arrangement.

Each request will be considered on its own merits, evaluating the amount due, and the customer's personal and financial circumstances. It may be necessary to issue an Income and Expenditure form to obtain a clear picture of the customer's financial circumstances. The aim is to agree a realistic arrangement to collect the outstanding debt within a reasonable time.

Once an arrangement is agreed between the Council and the customer, a new invoice will be issued to the customer.

## 11.0 Further recovery action

11.1 Where the customer fails to make a payment on their arrangement or no payments are received against the outstanding invoice, further recovery action will be taken.

The type of action that may be taken is as follows:

- **Recovery from the Department for Work and Pensions (DWP) Benefits.** Deductions from certain DWP Benefits will be considered
- **Recovery from Landlord payments.** Where the overpayment is recoverable from the landlord the overpayment can be deducted from their next Housing Benefit payment even if this does not relate to the tenant that was overpaid. This is called blameless recovery.

- **Council Rent accounts that are in credit.** If the customer is a Council tenant and has an outstanding overpayment and their rent account is in credit. The credit can be used to reduce or clear the outstanding overpayment.
- **Direct Earnings Attachment.** The Council can request employment information from HMRC . Once,obtained, the Council can issue a direct earning attachment which requests the employer to deduct any Housing Benefit Overpayment of an employee direct from their earnings The customer is legally required to notify the Council within 7 days if there is a change in employment.
- **Debt collecting Agency.** The Council will forward any outstanding overpayment of Housing Benefit to an agreed debt collecting agency where that customer has failed to engage, and all the above alternatives are not an option.

## 12.0 Change of Address “Gone Aways”

12.1 If correspondence is returned undelivered and marked “Gone away” or similar and a forwarding address is not already known every effort is made to find a new address for the customer.

The Council will make all legally allowable checks on different records and systems to trace the customer to continue the recovery action.

## 13.0 Unrecoverable Overpayments

13.1 In certain circumstances the Council can decide not to recover an overpayment.

Examples include:

- The customer is deceased and has left no estate to recover the overpayment from
- The customer has gone away, and the Council has been unable to trace them
- Where the overpayment is uneconomical to pursue

## 14.0 Write Offs

14.1 The Council recognises that where a debt is deemed to be irrecoverable, especially after all recovery options have been considered and/or, prompt write off of such debts is appropriate and good practice in certain circumstances and in line with the policy in Appendix 5.

## **APPENDIX 4 - Sundry Debt (Council Services) Policy**

### **1.0 Introduction**

1.1 The Council charges and collects income from a diverse range of activities, customers and range of public bodies and private businesses. Sundry debt does not include Council Tax, Business Rates, Housing Rent or Housing Benefit Overpayments.

1.2 The value of invoices raised can range significantly from a few pounds to several hundred thousand pounds and therefore, taken together, the value of all these sundry debts is considerable.

1.3 It is essential that the Council recovers all collectable debt owed to it and the purpose of this policy aims to:

- Maximise the collection of the Councils income
- Ensure that, where possible, payment up front is received ensuring that collection of the fee or charge involved takes place prior to the service being provided so that credit is only given when essential to do so
- Ensure clear terms and conditions of payment appear within documentation
- Ensure invoicing and recovery procedures are carried out on an accurate and timely basis, clearly detailing what the invoice is for, the period it covers, encouraging debtors to pay promptly, and making collection and recovery activity more efficient by prioritising collection of larger debts
- Minimise the time taken to raise invoices to within 10 days of the provision of service(s)
- Minimise the time taken to collect charges or to effect recovery
- Minimise the time taken to resolve invoice disputes
- End the ongoing delivery of a non-statutory service to a customer in non-payment cases, but only where it is possible to do so.
- Minimise the level of debt owed to the Council and its provision for bad debts
- Minimise the incidence of debt that cannot be collected
- Raise corporate awareness and responsibility of the importance of prompt billing and debt recovery across all services

1.4 The charge must, depending on legislation, always cover the cost of providing goods or service and the costs of collection, unless the Council has taken a policy decision to subsidise the service.

1.5 The charge must be invoiced in an efficient and cost-effective way, ensuring that the frequency of invoices is minimised for services that are delivery on a regular and planned basis.

1.6 The debt will remain the responsibility of the Service in which it was raised, and recovery action will be taken by the General Debt Recovery Team. It is the responsibility of the services to assist the General Debt Recovery Team in collecting debts, ensuring that information and assistance is provided to ensure debts are collected quickly.

## **2.0 Corporate Responsibilities**

2.1 All officers involved in the issuing and recovery of sundry debt invoices have a responsibility to ensure income due to the council is collected and so must ensure that:

- The Corporate Debt Recovery Policy is adhered to (specifically Appendix 3 – Sundry Debts)
- The aims of the policy are adhered to
- The parts of this policy that apply to their Service areas are correctly followed
- Specific attention is paid to prohibit the practice of not resolving invoice disputes within a reasonable period
- Budget Managers are fully aware of their responsibilities
- Relevant systems and procedures are in place
- Officers involved in the debt collection process are appropriately trained and are aware of their corporate responsibility

2.2 The Director of Finance (Section 151), Revenues & Benefits Service Manager with Internal Audit support will provide assurance that this Policy is adhered to and is effective.

## **3.0 Raising an Invoice**

3.1 A commercial approach should be adopted where fees and charges are obtained in advance or at the time of service provision. Where goods or services

provided need to be paid for after this, then the Council offers credit facilities wherever it is considered prudent to do so.

3.2 Prompt invoicing is essential to efficient debt collection; the longer the delay, the less likely is prompt settlement. Invoices must therefore be raised within 10 days of the service being delivered or due.

3.3 By raising an invoice, the originating service agrees approval to take appropriate recovery action through the General Debt Recovery Team, including court action when necessary, is granted at the time the debt is raised.

3.4 Invoices must not be raised for amounts of less than £40, excluding VAT, unless the invoice relates to collection of peppercorn rents, licenses or leases in connection with occupation of Council land and property. This is in line with the Council's Financial Procedure Rules.

3.5 For payment of amounts of £40 or less services are required to request payment up front where it is reasonable and practical to do so.

3.6 The service responsible for raising the invoice must ensure that the evidence of the service provided is fully validated and that the invoice is accurate and contains sufficient detail for both billing and recovery purposes. Services must ensure that all invoice information is fully completed, including:

- Customer's full name(s), for Businesses the appropriate trading name.
- Customer's full address(es), including postcode(s) – in the cases of Businesses the appropriate billing address
- Customer's contact telephone number(s)
- Customer's e-mail address
- Name of contact officer in cases of query over the service provided
- Date(s) of supply of service
- Purchase order number (where applicable)
- Full description of the service/goods supplied
- For each type of supply – the unit price or rate, quantity or extent of goods and services
- Amount due
- VAT amount and rate of VAT charged
- Total due
- For each type of supply – the unit price or rate, quantity or extent of goods and services, VAT amount and rate of VAT charged

3.7 The content (narrative) on the invoice should be concise but of sufficient clarity to ensure that the customer fully understands the bill.

3.8 All invoices must be raised to a correctly named legal entity. In the event of non-payment, legal action cannot be taken against a non-legal entity. Legal entities are:

- **Individuals** - This is usually someone living at a residential address. When a request is received for a service, the person's full name (title, forename(s) and surname) must be obtained and stated. Initials are not sufficient. If the request is on behalf of more than one person then the full name of each person must be obtained and stated. The full correct postal address, including postcode, must be stated.
- **Sole Traders** - Where an individual is trading in his or her own name the full name of the individual as well as the business name must be obtained e.g. Mr John Smith, trading as Fast Removals. Evidence of the name of the business could be in the form of a request for services on a business letterhead. The individual's full postal address must also be requested.
- **Partnerships** - "LLP" must be added where applicable, otherwise the full names of one, two or more partners must be stated, followed by "trading as" (as above). If LLP is applicable the full correct business address, including postcode, must be stated, otherwise the full correct postal address(es), including postcode of the partner(s) should be stated.
- **Limited companies** - the name must include "Ltd" or "Plc". Invoices can be addressed to either the current registered office or to a place of business of the company. Evidence of their Limited Company Status and registered office must be obtained by requiring confirmation of the service request on their official letterhead
- **Charities limited by guarantee** - Companies which are charitable and also limited by guarantee can be exempted from using the term "Ltd" so, for example: "Oxfam" is a correct name. Evidence of their charitable status must be obtained by requiring confirmation of the service request on their official letterhead.

- **Clubs run by a committee** - the full name(s) and address(es) of the treasurer and / or the secretary, or the trustees must be stated.
- **Trustees** – the full name(s) and address(es) of the trustee(s) and the full name of the trust must be stated.
- **Executors or Personal Representatives** – must be addressed e.g. “Mr Peter Smith! Executor of James Brown Deceased or “Personal representatives of James Brown Deceased”. The full postal address(es) of the executors/personal representatives must be stated.

3.9 An invoice should not be raised where:

- A purchase order or written agreement has not been received
- It cannot be proven that the goods and/or services have been supplied
- If the debt is already bad or doubtful

## 4.0 Payment Terms

4.1 The Council will collect monies owing to it fully and promptly in line with the Immediate payment terms as outlined on the invoice The standard terms apply to all sundry debtor accounts raised by the Council and should not be deviated from unless with the prior approval of the Director of Finance (Section 151).

4.2 All requests from customers to enter into payment agreements must be referred to the Corporate Debt team regardless of the amount owed. The Corporate Debt team will set up and monitor all payment agreements.

4.3 Payment terms beyond the 30-day period will only be granted where a customer is not able to settle the debt in full in one payment.

4.4 The General Debt Recovery Team will withdraw payment terms if a debtor fails to maintain a payment agreement.

## 5.0 Accounting Arrangements

5.1 Services will receive the credit when an invoice is first raised.

Where debts cannot be recovered and the debt is written off, the original debt will be debited from directorate bad debt provision by way of a write off. All write-

offs will be considered in accordance with the Financial Procedure Rules and in accordance with the policy guidance in Appendix 5 to this policy.

5.2 All relevant information relating to an invoice (otherwise known as a proof of debt) should be kept until at least six years after it is first issued. If at the end of that six-year period the bill still remains unpaid but payments are being made, the supporting documentation should be retained until final settlement or write-off of the debt.

5.3 Appropriate accounting arrangements will be put in place to ensure that the Council reclaims VAT from HMRC on a bad debt if:

- Goods/Services have been supplied and VAT has been accounted for and paid to HMRC (as output tax), but no payment (or only a part payment has been received, and
- The amount has, or is, about to be written off in the accounts, and
- Six months have elapsed from the later of the supply date and the time when payment was due, and
- The reclaim of VAT is made within three years and six months of the date the payment was due and payable or the date of supply.

5.4 Refunds for overpayments must be submitted by the Accounts Receivable Control Team to process and reconcile the refund request to control account and journals relating to the ledger code. Refunds will only be processed where there are no other debts outstanding and due from that customer.

5.5 All credit values of £1 or under will be transferred to the Councils Central Fund after the expiry of one financial year plus the current financial year. The same process will also be followed for any credit balances where General Debt/Recovery/Accounts Receivable Control Team is unable to trace the debtor.

## **6.0 Dispute Resolutions**

6.1 Where a customer disputes an invoice with the service, the service must notify the General Debt Recovery Debt team immediately to prevent the recovery process continuing. Equally, where a customer contacts the debt team rather than the service to dispute the invoice, the matter will be referred to the service responsible for raising the invoice and recovery will be held. Full notes and reasons for the dispute must be added to the customer's account.

6.2 To ensure the efficiency of debt collection and good customer service, all disputes must be resolved by the service responsible for raising the invoice within 20 working days of the dispute being raised. The General Debt Recovery Team must be notified of the outcome of the dispute.

6.3 A dispute is not resolved unless it meets one of the following conditions:

- Customer is correct and gets a full credit
- Customer is partly correct, gets a partial credit and accepts revisions
- Customer is not correct and accepts the charge
- Customer is not correct but does not accept the decision of the service and the service is prepared to support the commencement or continuation of recovery proceedings.

6.4 Where disputes are not resolved within 20 working days of the dispute being raised, outstanding disputes will be escalated to senior service manager within the service area initiating the invoice.

6.5 Following a case referral to a senior service manager, if the service does not resolve the dispute or provide a viable reasons within a further 5 working days as to why the dispute cannot be resolved the disputed debt will be escalated to the relevant chief officer for review and resolution.

6.6 For all unresolved disputes exceeding 35 working days, the General Debt Recovery team will raise a credit note to remove the debt from the system and reverse the income from the service. The service responsible for raising the invoice will be notified when this happens. It will then be the responsibility of the service for the re-raising of the invoice once the dispute is resolved, if appropriate.

## **7.0 Accounts subject to Recovery**

7.1 Following the issue of invoices, unless there is a payment agreement in place, reminders will be sent for all invoices unpaid or partly unpaid 7 days after the invoice due date, i.e. 37 days after the invoice is raised.

7.2 If an invoice is still unpaid after a further 14 days of the invoice reminder being raised (i.e. day 51 after the invoice is raised), a further letter will be sent that explains to the customer the potential action of a referral to a debt collection

agency or legal action through the County Court that may be considered by the Council

7.3 If, after a further 14 days, after the issue of the letter referred to in 7.2, an invoice is still unpaid (i.e. day 65 after the invoice is raised) the General Debt Recovery Team will attempt to make telephone contact with the customer in an effort to resolve the matter. Where appropriate, payment agreements will be offered. If telephone contact cannot be made or contact is made but the customer does not wish to engage with the Council to resolve the matter, the General Debt Recovery Team will consider the most appropriate recovery route. Each case will be treated on its own merits, but the following guidance will normally be adhered to:

7.4 Single or multiple debts up to £500 may be referred to the Councils contracted debt collection agents to collect the amount overdue if all previous attempts to secure payment have been unsuccessful. No additional fees will be added to the original debt.

7.5 Single or multiple debts over £500 will be considered for action through the County Court. It is expected that the originating service will provide the necessary supporting information to aid a successful prosecution within XX days of request.

7.6 Consideration will be given not to take further recovery but only in cases where it is not reasonable, economic and in the interests of Council Ratepayers to do so. In any case being considered for write-off, the write-off guidance in appendix 5 will be followed.

7.7 In appropriate cases where County Court action is considered appropriate, any failure of services to provide supporting information to aid a successful prosecution will result in the General Debt Recovery Team raising a credit note to cancel the charge and the loss of income will be met by the service who raised the original invoice.

7.8 For debts of £5,000 or more, the Council may also consider taking bankruptcy action through the courts if sufficient assets exist to meet the outstanding amount owing to the Council. Before such action is taken, the Council will always send a final letter inviting the customer to a pre-arranged meeting to make a payment agreement. Bankruptcy will be considered in line with the policy in Appendix 4.

7.9 In some instances, despite a County Court Judgement being obtained and enforcement action being taken, such action may, in some cases, fail to produce a payment towards some or all the debt due. In these circumstances, further action is limited and in these cases the invoice will be considered for write-off in accordance with the write-off guidance in appendix 5.

## **8.0 Credit Notes**

8.1 There is a clear distinction between raising a credit note and writing off a debt.

8.2 A credit note to cancel or reduce a charge must only be issued to

- Correct a factual inaccuracy or administrative error in the raising of the original invoice
- Cancel an invoice where a dispute has not been resolved within 28 days
- Adjust the amount of debt due
- Cancel an invoice where the service is unable to provide sufficient documentary evidence to support the recovery of an outstanding invoice.

8.3 All credit notes must be supported by evidence that validates the reason for reducing or cancelling the invoice.

8.4 When raising credit notes, services must ensure that all information is fully completed, in the same way as invoices are raised, including:

- It must reflect an agreed reduction in value and be issued within one month of the agreement.
- Description of supply
- Rate and amount of VAT charged
- Total charge
- In addition, the invoice number and date of the original VAT invoice should be shown on the credit note.

## **9.0 Corporate Reporting and Monitoring**

9.1 All Chief Officers will be issued with a monthly report to show debt levels outstanding within their portfolios. The reporting systems will show the breakdown of aged debt levels including a comprehensive breakdown of the invoices raised these within their services which remain outstanding.

9.2 In the interests of transparency and accountability, a half yearly report will also be presented to the chief officer's team showing debt levels across the organisation together with a full breakdown of aged debt levels within each portfolio.

## **10.0 Write Offs**

10.1 The Council recognises that where a debt is deemed to be irrecoverable, especially after all recovery options have been considered and/or taken, prompt write off of such debts, including reclaiming of VAT from HMRC (where applicable) is appropriate and good practice in certain circumstances and in line with the policy in Appendix 5.

## **APPENDIX 5 - Bankruptcy Policy**

### **1.0 Introduction**

1.1 The Council is committed to using the most effective recovery methods available and this policy will ensure that the Council's very occasional use of bankruptcy is consistent and complies with all relevant legislation and best practice.

1.2 Council Tax and Business Rate regulations allow for debts over £5,000 to be considered for bankruptcy providing that Liability Orders have been obtained. For Sundry debts and Housing Benefit overpayments, bankruptcy proceedings may be taken against debtors who owe more than £5,000 where a County Court Judgement has been granted in respect of the debt.

1.3 The Council also recognises that serious nature of bankruptcy which may result in an insolvent person's property being vested in a trustee – someone who realises and distributes payment among the creditors in final settlement of their claims. The serious nature of this action cannot be underestimated as the consequences could result in a person losing their home and possessions, and be liable to pay a charge and statutory fees/costs associated with bankruptcy amounting to several thousand pounds

1.4 Given that the Council is not a preferential creditor for the purposes of bankruptcy there is no guarantee of a dividend being paid. The Council will only consider using bankruptcy as a last resort and final option and will take a cautious and diligent approach in deciding if bankruptcy is reasonable action to take.

1.5 Bankruptcy action takes place in the debtors local County Court with bankruptcy jurisdiction unless the debtor resides in London, in which case the action takes place in the High Court or the Central London High Court.

1.6 The Recovery Team will manage the administration of bankruptcy cases and proceedings in respect of Council Tax, Business Rates, Sundry Debt and Housing Benefit overpayments, with the assistance from Legal Officers in appropriate cases.

## **2.0 When bankruptcy Action may be taken**

2.1 The Recovery Team may consider using bankruptcy proceedings in the following circumstances:

- Where the debt exceeds £5,000 and the debtor appears to have sufficient assets or equity to ensure the debt is recoverable by the Official Receiver of the Insolvency Service or the Trustee in Bankruptcy.
- Where the debtor is not prepared to make a payment agreement to clear the debt within a reasonable and acceptable timescale.
- Where other methods of recovery are considered inappropriate or have failed and bankruptcy action, as a last resort, appears to be a fair and proportionate course of action.

### **3.0 Recording Information and Decisions**

3.1 When the Council consider bankruptcy proceedings, a log of events will be maintained on the customer's account throughout the process to ensure that bankruptcy remains the most appropriate course of action.

3.2 Prior to commencing bankruptcy proceedings enquiries will be made of the Revenues and Benefit records to:

- Establish a debt history and whether any previous debts have been collected within a reasonable period by other means.
- Ensure that all known benefits, discounts, and exemptions have been granted based on the information held
- Establish whether, based on any information held, the debtor may be vulnerable or unable to deal with their day to day financial affairs or have had previous debts written off.

3.3 Contact will also be made with relevant portfolio to ascertain if the debtor is known to them and therefore may be vulnerable. If the debtor is currently receiving any care service further enquiries will be made with the key worker to establish if the debtor may be vulnerable by way of, for example, age, mental illness, serious learning difficulties or where it is known that the debtor is unable to deal with their own affairs. Should it be apparent the debtor has such difficulties then consideration will be given to whether the help of other agencies should be sought, and to the appropriateness of pursuing an alternative course of action, including the potential to write off in line with the policy in appendix 5.

3.4 If records held and enquiries with relevant Directorates do not indicate that the debtor may be vulnerable then enquiries will be made with a credit reference agency and the Land Registry to establish information about the debtor's financial standing and ownership of property and assets.

3.5 In the event that vulnerability is identified then details of the perceived vulnerability will be recorded. Further enquiries will then be made with the relevant support services within the Council together with possible referral to other advice agencies and to determine an alternative method of recovery.

## **4.0 Statutory Demand**

4.1 Where a decision is taken to commence bankruptcy proceedings a formal 'statutory demand' for payment will be issued by the Council to the debtor and the service of the statutory demand upon the debtor is the first formal stage in bankruptcy proceedings.

4.2 Guidance on service requirements are set out in the Insolvency Proceedings Court Practice Direction. A letter will also be issued with the statutory demand setting out the intentions of the Council and what the debtor needs to do to comply with it.

4.3 The debtor will still have the opportunity to contact the Council, even at this stage and, depending on information supplied, it may still be possible to a short-term repayment arrangement. The debtor also has the right to apply to the County Court to have the Statutory Demand set aside.

## **5.0 Bankruptcy Petition**

5.1 The Council may present a Creditors Bankruptcy Petition to the County Court within four months of service of the Statutory Demand Notice if the debtor has not complied with it, or if alternative payment arrangements cannot be agreed following the service of the Statutory Demand.

5.2 Prior to presentation of the Petition, further enquiries will be made all relevant Directorates to establish whether the debtor has become known to them during the recent process in which case the action will be reconsidered.

5.3 The Council is required to serve the Petition upon the debtor and guidance for service requirements are set out in the Insolvency Proceedings Court Practice Direction.

5.4 At this stage, the debtor is required to pay the debt in full before the hearing of the Petition at Court otherwise the Court will be asked to make a Bankruptcy Order. The Council will always support a short adjournment of the court proceedings if the debtor provides the court with evidence that they will be able to pay in full within a very short period.

5.5 If, between the Petition being presented to the Court and the hearing of the Petition, it becomes known that the debtor does not have the capacity to deal with

the matter, then full consideration will be given to seeking an adjournment of the proceedings to enable both the debtor and the Council to obtain further advice.

## **6.0 Making of a Bankruptcy Order**

6.1 If the Court awards a Bankruptcy Order, the Official Receiver of the Insolvency Service is immediately appointed Trustee in Bankruptcy.

## **APPENDIX 6 - Write Off Policy**

### **1.0 Introduction**

1.1 The Council recognises that where a debt is irrecoverable, prompt and regular write off of such debts is important so that the Council can budget for bad debts. An integral part of debt recovery is the effective management of bad debts to ensure that resources are applied efficiently to the collection of monies outstanding which can reasonably be expected to be collected.

1.2 The Council will seek to minimise the cost of write offs to the local ratepayers by taking all necessary and appropriate recovery action to recover what is due. All debts will be subject to the full collection, recovery and legal procedures and considerations as outlined in this Corporate Debt Recovery Policy.

1.3 Write offs will be carried out in accordance with the Councils Financial Procedure Rules, and only in cases where

- The demand or invoice has been raised correctly and is due and owing; **and**
- There is a justified reason why the debt should no longer be pursued.

1.4 The Director of Finance has delegated authority to write off debts up to £24,999. All debts considered for write off in excess £25,000 will be referred to Cabinet member for Finance and Resources for approval.

1.5 Debts will normally only be considered for write off where the account is 'closed' and there are no reoccurring debts. Only in exceptional circumstances will amounts on 'live' and ongoing accruing debts be considered for write off. All such cases must demonstrate that further recovery will not achieve collection of the debt.

1.6 The Council will record all write-off decisions.

1.7 The Council may reinstate a previously written-off debt if new information concerning a debtor or contact is made with the Council. Recovery of such a debt will be undertaken should it be possible.

### **2.0 Reasons for Write Off**

2.1 It is not possible to list every possible scenario which could make a debt

suitable for write off, however the following examples capture the main reasons why debts become irrecoverable:

Absconded / No Trace -The debtor has left the address listed on the invoice/bill and all reasonable attempts, including using trace agents, to find the debtor have failed.

Deceased - The debtor has passed away and there is evidence of insufficient or no funds in the deceased persons estate to pay the amount outstanding

Debt 'out of time' - Debts over 6 years old and where a Liability Order has not been granted (Council Tax and Business Rates), or no contact has been made and no payments have been received (in accordance with the Limitation Act 1980 as amended).

Uneconomical to pursue - When all recovery processes have been tried or considered and where the cost of proceeding to recover would be cost prohibitive to the Council and to its ratepayers.

Debts subject to a Debt Relief Order - Where debts owed to the Council are subject to and included in a Debt Relief Order and cannot be recovered.

Bankruptcy - The debtor is declared bankrupt and sums due before the date of bankruptcy cannot be recovered.

Companies in Liquidation - The Company is a Limited Company registered with Wound Up / Dissolved Companies House and no longer exists and there is Struck Off no means of recovering the debt.

### **3.0 Conditions for re-claiming VAT on Bad Debts**

3.1 The Council will be entitled to a refund of VAT from HMRC on any bad debts (excluding Council Tax, Business Rates and Housing Benefit Overpayments) if the conditions prescribed below are met:

- Goods and services have been supplied and VAT has been accounted for and paid to HMRC but no payment (or only a part payment – see 3.4) has been received.
- The debt has, or is, to be written off in the accounts and transferred to a bad debt account

- The debt must not have been assigned
- The debt has remained unpaid (or partly unpaid) for six months or more after the later of the date payment was due or the date of the supply of the goods or services
- The re-claim of VAT is made within three years and six months of the later of the date payment was due or the date of the supply of the goods or services.

3.2 The Council is required, in accordance with HMRC guidance, to retain copies of all invoices and bad debt account details for a fixed period of six years

3.3 VAT on bad debts will be re-claimed on the monthly VAT return, ensuring that appropriate VAT codes are debited with the appropriate amounts to reduce the amount of the write off recorded against the appropriate bad debt provision for the relevant Directorate.

3.4 Where the Council is re-claiming VAT on debts where part payment is received, the entitlement to bad debt relief on VAT is based on the amount outstanding for the supplies made. For a single supply, where no payment is received, the amount of VAT accounted for can be reclaimed. If a part payment of the debt is received, a refund can only be claimed on the VAT relating to the amount still unpaid.

3.5 HMRC advise that payments should be allocated to the earliest supply made unless the customer specifies that a payment is for a particular supply and pays for that supply in full.

3.6 In bad debt cases where everything except the VAT element is paid, if the customer refuses to pay the VAT element of an invoice and this is the only element outstanding, relief is limited to the VAT element of the total debt outstanding. For example, if the charge was £100 (which was paid) and £20 VAT remains outstanding, the Council is entitled to re-claim VAT of £3.33 (i.e. 1/6 of £20).

3.7 Any bad debt relief claimed on sales must be at the same rate of VAT as used for those sales, that is, 20% from 4 January 2011, 17.5% from 1 January 2010 to 3 January 2011 and 15% from 1 December 2008 to 31 December 2009.

3.8 If VAT is re-claimed on a bad debt and a payment is later received from the customer, the VAT element included in the payment must be paid over to HMRC in the tax period in which the payment is received.

3.9 For any technical queries on VAT treatment of invoices please refer to the Council's Tax Advisor.