

Corporate Debt Policy

Oadby & Wigston Borough Council

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1. Purpose of the policy

The Corporate Debt Policy identifies where responsibility for collection of different debts across Council services lies and sets out the principles and standards in relation to contact, recovery process, repayments and benefit / money advice.

Included in the policy is the provision of support mechanisms and practices to all customers. It details the approach to collecting debt at OWBC.

The policy sets the framework for a consistent and sensitive approach to collecting debt whilst at the same time ensuring that the Council continues to maximise income collection and arrears recovery performance.

2. Aims and principles

This policy aims to achieve a balance between the financial needs of OWBC and the needs of our customers by;

- Applying common repayment and debt management principles to all the debts that it has to collect; giving regard to the relevant legislation that governs the recovery of each type of debt.
- Applying common considerations and principles across all Council departments when assessing the customers' circumstances and ability to pay.
- Recovering debts by agreed arrangements that are realistic and sustainable or, where possible, by attachment to earnings or benefits in preference to the use of external agents.
- Recognising that households dependent on means tested income replacement benefits and / or with multiple debt problems may face particular problems and need extended repayment periods.
- Endeavouring, where multiple debts are owed to the Council, to agree payment arrangements on the principles of preventing further debt whilst allowing all debts to be repaid. In practice this may mean that current liabilities are paid whilst a smaller amount is agreed to clear older debts.
- Working in partnership with local advice agencies and signposting customers to advice and support agencies available to them and encouraging self-help.
- Providing support through the Financial Inclusion Officer who will work with customers struggling financially.
- Ensuring that both internal recovery officers and external agents contracted to the Council, work to the agreed Code of Practice found in the Enforcement Agent Framework Agreement
- Raising awareness of debt with customers and clearly identify how much / how it has occurred and raise awareness of the implications of non-payment.
- Using the full range of collection remedies as appropriate if debts are not paid. The policy does not prejudice any legal action that the Council may need to take.
- Promoting ways to pay and support that is available to customers.

- Applying this policy to all departments and providing the same level of service at the initial enquiry stage. However, all debts will be recovered in accordance with agreed processes with each service.
- Maximising income for the Council, including rent income due to the Housing Revenue Account for Council houses and garages to ensure that all Council Tax and rent payers' interests are protected.
- Achieving an equitable allocation of income available to pay across all Council debts.
- Achieving efficiency savings by carrying out customer welfare checks and identifying solutions for customers on debt issues at the first point of contact.
- Being 'firm but fair'
- Being "preventative" by, for example, offering a wide range of convenient payment options and advice, such as budgeting, managing money and dealing with debt.
- Helping, where possible, to maximise customer's income and increasing their ability to pay.
- Sign posting customers to support agencies, for example Helping Hands and Christians Against Poverty.
- Ensuring consistency of approach and high standards of service when dealing with customers.
- Sharing knowledge, information and expertise across the Council and other agencies whilst striving to comply with legislation such as the Data Protection Act etc.
- Applying best practice in relation to debt collection.

3. Scope

This policy applies to the collection of all income streams, including (not restricted to)

- Council Tax
- Business Rates
- Housing Benefit overpayments
- Sundry Income (invoices raised for a variety of Council Services) also, Commercial Rent, Penalty Charge Notices
- Council house rents
- All COVID19 support grant repayments

4. Priority of debt

It is important to note that for certain types of debt, there are specific rules and legislation which govern their collection and enforcement. Officers need to ensure that in addition to collecting debts in a legally correct manner (and in accordance with any government or professional guidance), they also adhere to the principles within this policy. The schedules of appendices to this policy provide officers in specific services with additional guidance in relation to debt recovery in those service areas. There are many types of debt, but those considered as "priority" debts are those that are owed to creditors who can take the strongest legal action against an individual who does not pay.

To be clear it isn't the size of the debt that makes it a priority but what creditors can do to recover their money; individuals are not always aware of the consequences of failure to pay.

The Council will look to raise awareness in this area with its customers. Officers must factor in other non-Council "priority" debts when giving consideration to a customer's ability to repay monies owed to the Council.

The procedures supporting this Policy will ensure that officers can effectively deal with repayments of debts. As such work with other departments when required to agree the priority of payments, this may include the sharing of relevant information.

Priority debts are listed below:

Equal priority debts

The Policy identifies these as:

- Rent arrears – as they can result in eviction
- Mortgage arrears – as they can result in repossession
- Council Tax and Business Rates – as they can result in enforcement action, deductions from earnings/benefits (Council Tax only), bankruptcy or imprisonment
- Other secured loans – as they can result in the loss of a home

Other priority debts

- Utility debts – as they can result in disconnection
- Income Tax & VAT – as they can result in bankruptcy or imprisonment
- County Court Judgements – as they can result in enforcement agent action, Attachment of Earnings, Charging Order or bankruptcy
- Fines or Compensation – as these can result in imprisonment
- Hire Purchase – will be considered if, for example, it is for the purchase of a car needed to get the owner to work
- Benefit Overpayments – as they can result in deductions from benefits or earnings
- Maintenance or child support arrears– as they can result in enforcement agent action
- TV Licence – as this could result in a custodial sentence

Non priority debts

Credit/Store cards, unsecured personal loans, bank overdrafts, credit/interest free/hire purchase agreements (other than above), catalogue debts and money borrowed from family and friends.

All income and arrears will be actively pursued in accordance with this policy, however, in instances where multiple debts exist due regard to the hierarchy of debt detailed above should be taken.

5. Equalities

All individuals will be treated in accordance with the Council's Equality and Diversity agenda and the Equality Act 2010. An Equality Impact Assessment has been completed in relation to this policy when it was first established.

The Council believes this policy should be fair to everyone regardless of their age, race, gender, disability, religious belief or sexual preference. Furthermore, the Council feels that it is important for debtors to communicate their situation confidentially to the Council so that we are able to make fair decisions on a case-by-case basis.

Equality and diversity considerations will be taken into account. Specifically, staff seeking to recover debts will have regard to ensuring information is accessible through translations or sign language.

6. Roles and responsibilities

Heads of Service are responsible for making sure that this policy is adhered to.

Officers have the responsibility to follow the policy when carrying out their roles in respect of arrears cases.

7. Vulnerability

A vulnerable person is a person who, by characteristics and/or circumstances, is unable to act or respond appropriately to the normal collection procedures, or for the same reason is unreasonably affected by them. The Council recognises that vulnerability can come in many forms, and it can also be multi layered. Vulnerability can also be temporary, permanent or come in a series of episodes and anyone at any time could potentially be deemed vulnerable.

This list of factors is not definitive and all of our customers' circumstances must be taken into account.

- Carers
- Care leavers
- Cognitive impairment
- Debt management where overall debts need to be managed
- Disability
- Financial poverty
- Learning difficulty (including literacy difficulties)
- Language difficulty
- Pregnancy
- Lone parents – with young children
- Medication
- Mental health
- Physical health

- Possession proceedings
- Probation service involvement
- Recent bereavement
- Substance abuse
- Social care services involvement
- Terminal illness
- Victim of abuse
- Victim of war
- Homelessness

This list of factors is not definitive and all of our customers' circumstances will be taken into account. It is recognised that vulnerable customers may be less able to manage their financial and personal affairs and additional support may be required. Accordingly, vulnerable customers identified will be signposted to appropriate support agencies. Although not an exhaustive list for reference these stakeholders include Citizens Advice, Step Change, Christians against Poverty, Churches Housing Action Team (CHAT), Shelter and Navigate, National Debt Line and Advice UK.

The Council may recover debts from person who are vulnerable but will take steps to ensure its actions are reasonable in the circumstances. For example, personal visits may be increased, assistance in filling in forms or writing letters may be provided. Each case should be considered on its own merits and extra care will be taken by Officers to ensure that the individual understands the debt, what is expected in relation to repayment and the consequences of non-payment.

In accordance with The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 the Council will not take action to recover a debt when it has received official confirmation that a breathing space moratorium and or a mental health crisis moratorium is in place.

8. Methods of payment

The Council recognises that the easier it is to pay, the more likely it is that payment will be made and the less likely that debts will accrue. The Council's preference is for low cost payment methods and those that provide a high degree of accuracy and certainty, such as Direct Debit, Standing Orders, internet banking, use of the Council's website and automated telephone payments.

To provide our customers with the greatest flexibility payment via 'Allpay' facility is also offered at Post Offices. We still allow Cheques for the ease of our customers.

The Council remains proactive in trying to "channel shift" customers, where possible, to encourage them to make payments that cost the least in transaction fees.

9. Payment arrangements

Although various scenarios may be encountered, in general terms, any arrears should be paid within a maximum of twelve months from when they were incurred. However, in many instances, officers will make informed decisions to spread the arrears over a longer period to aid repayments. It is Council policy that only in exceptional circumstances can an arrangement be made up to a maximum of six years. However, regulatory schemes such as 'Breathing Space' payment plans may see up to a 10 year payback through a Statutory Debt Recovery Plan (SDRP) imposed by the Insolvency Service.

10. Offsets (credits)

In the interests of efficiency, the Council will offset any customer credit balances against other amounts they may owe, before providing a refund - any such arrangements will be undertaken in a fair and legal manner and with the customer's agreement wherever possible.

11. Write-offs

The Council recognises that a small proportion of its overall income may not be collectable due to matters beyond its control. Where a debt is assessed to be irrecoverable it will be subject to a write off process that is consistent with recognised accounting practices. The Council will seek to minimise the cost of write offs by taking all appropriate action to recover all amounts due.

Income deemed irrecoverable must satisfy one of the pre-determined criteria including but not restricted to:

- the customer has died and there are no or insufficient funds in the estate
- the customer cannot be traced
- it is uneconomical to pursue the debt
- the income is uncollectable due to bankruptcy/insolvency
- all recovery methods have been exhausted
- it is not in the public interest to pursue e.g. at risk and vulnerable service users
- the debt is prescribed under the Limitation Act 1980

All write offs will be carried out in accordance with the relevant provisions contained within the Council's Financial Regulations.

It should be noted that just because a debt is written off it does not rule out the possibility of writing the debt back and pursuing it to the full extent of the law. Examples of this may occur is if a debtor absconds with no forwarding address but is subsequently traced or when an individual/company goes bankrupt or is made insolvent, when partial/full dividend(s) can be received many years later and the payments written back onto the account.

Where a cash credit is showing on an account and the Authority is unable to refund or transfer, the Authority will write the value back on returning the account to zero. These accounts would have to be in credit for a period greater than 13 months before this housekeeping takes place.

Debts may only be written off in line with Financial Regulation 20. A debt, which is properly due to the Council and deemed irrecoverable, shall only be written off as follows:

Amount	Authoriser
Less than £5,000	Chief Financial Officer or their appointed nominee
More than £5,000 but less than £10,000	Chief Financial Officer or their appointed nominee and the Chair of the Policy Finance and Development Committee
More than £10,000	Policy, Finance and Development Committee

The debt to be written off will be allocated one of the following reason codes:

- Deceased
- Unable to trace
- Uneconomical to pursue
- Bankruptcy / Insolvency
- Individual Voluntary Arrangements (IVA)/Debt Relief Orders (DRO)
- Recovery exhausted
- Statute barred

12. Operational procedures / Enforcement remedies

The Council will ensure that processes around income and arrears management are robust, and the most effective collection remedy is used.

Financial decisions will be made by identified officers and agreed by the s151 Officer as required. These arrangements will be clearly detailed in Financial Procedures/Rules, and operational procedures and guidance.

The Council uses external enforcement agents to support its debt collection services. Enforcement agent's services are procured in line with the Council's Contract Procedure Rules (CPR) and Procurement Strategy. The Council reserves the right to appoint such Enforcement Agents as it deems necessary for the recovery of Council debts and may vary from time to time. A list of currently authorised Enforcement Agents is available on request.

Enforcement agents will be instructed to act where debtors have not made a satisfactory arrangement for payment of the debt or have failed to maintain payment plans. Charges will be levied where permissible by law and as agreed under the terms of the procurement, Service Level Agreement and the Enforcement Agent Code of Conduct.

When an account has been issued to the enforcement agents it becomes their responsibility to collect the outstanding debts (although the Council will continue to monitor the effectiveness of the enforcement agent's services provided on its behalf). Similarly, payments made should go directly to the enforcement agent for recording on their systems. Any debtor who contacts the department to discuss payment must be told to negotiate with the enforcement agents and make payments directly to them.

Cases will be withdrawn from enforcement agents, where there:

- Is a justified dispute in liability
- The instruction to the enforcement agent was issued in error Cases may be withdrawn from the enforcement agents where:
 - The debtor has recently suffered a close bereavement
 - An attachment order (wages, benefit or allowances) is in effect
 - The debtor is bankrupt
 - Recovery of the debt can be affected more effectively through another method
 - The Head of Service or Senior Recovery Officer feels the matter should be withdrawn.

The performance of the enforcement agents is reviewed at formal meetings with their account manager on a regular basis.

Enforcement Remedies such as those listed below may be applied in the collection of arrears;

- Magistrates Court, Liability Orders
- County Court, County Court Judgment
- County and High Court, Insolvency e.g., Bankruptcy, Winding Up (Businesses)
- County and High Court, Enforcement
- CRAR – Commercial Rent Collection
- Forfeiture for residential and commercially let properties
- PCN – Warrants of Execution

Other

- Attachment of Earnings
- Attachment of Benefits
- Enforcement Agents
- Charging Orders / Forced Sale
- Committal to Prison
- Special Arrangements

The following table sets out the various collection pathways for the major debt streams within the Council's debt portfolio.

Type of debt	Charging method	Default collection pathway	Appeals	Final collection – persistent/deliberate defaulters
Council tax	Bill	Magistrates court	Banding VOA Liability Magistrates' court Internal review Valuation tribunal	Special arrangements Attachment of benefits Attachment of earnings Enforcement agents (bailiff) Insolvency Charging order Committal
Business rates	Bill	Magistrates' court Court of suitable jurisdiction	Rateable value VOA Liability Magistrates' court Internal review Valuation tribunal	Special arrangement Enforcement agents (bailiff) Insolvency Charging order Committal CCJ
Sundry debt	Invoice	County Court	Internal review District judge	CCJ Garnishee order High Court enforcement Winding up order Charging order Attachment of earnings
Parking penalties	Penalty notice	County Court	Internal review District judge	CCJ Garnishee order High Court enforcement Winding up order Charging order Attachment of earnings
Housing rents	Annual notification of weekly charge	County Court	Internal review District judge	Possession and eviction
Housing benefit overpayments	Invoice	County Court	Internal review District judge	CCJ Garnishee order High Court enforcement Winding up order Charging order Attachment of earnings
Commercial rents	Periodical invoice	County or High Court	By application to court/judge	Possession and eviction CRAR statutory procedures

Environmental crime fixed penalties	Penalty notice	Magistrates' Court	Direct to magistrates	Fine and/or committal
Housing rechargeable rent repairs	Invoice	County Court	Internal review District judge	CCJ Garnishee order High Court enforcement Winding up order Charging order Attachment of earnings

13. Disputes and complaints

A complaint will most commonly be received by one of the following methods:

- Via the council's website - www.oadby-wigston.gov.uk/complaints
- By email to the Customer Service Team customerservices@oadby-wigston.gov.uk
- By letter to the Compliance Team at Council Offices, Station Road, Wigston, LE18 2DR

Once a complaint has been made, an acknowledgement will be sent within five working days.

14. Review and version control

The Corporate Debt Policy will be monitored and regularly reviewed on at least an annual basis. This will enable it to be updated where necessary and take account of changes in legislation.

Appendix 1 – Council Tax

Recovery of debt in respect of Council Tax is governed by Council Tax recovery procedures laid down in statute in the Council Tax (Administration & Enforcement) Regulations 1992 and subsequent amendments. External enforcement agents may be instructed for the enforcement and recovery of Council Tax debts. The notes below provide a summary of the key recovery and enforcement stages.

Statute of limitation

If the Council has billed the debtor in the past it is permitted to obtain a liability order within 6 years from the date of that bill. Debts over 6 years old, for which a summons has not been issued, must be written off. Where the Council possesses a liability order there is no time limit in relation to how long it can pursue a debt.

Customer care plus

In respect of Council Tax, the service provides support to vulnerable customers through its Customer Care Plus option. Vulnerable customers can register with the service and where a customer has taken up this option, the Council can:

- Provide information in alternative formats
- Offer home visits
- Work with customer representatives
- Provide telephone reminders when payments have been missed

Council Tax recovery guidance

Demand/bill

Demand notices are issued by 17 March in each financial year to allow for the first instalment to be paid on 1 April and to ensure the appropriate notice is given under the Direct Debit scheme. Council Tax bills are produced daily throughout the year with instalments calculated in line with legislation.

Instalment payment

Instalment payments are due on 1 each month for those paying by all methods other than Direct Debit. The Council has the facility to operate Direct Debit for 2 dates within the month: 1st and the 15th. The law requires that all instalment plans will be over 10 months at the start of the year. Customers may opt for payment over 12 months.

Reminder notice

A Reminder Notice can be issued immediately if an instalment is not paid. However, the senior recovery officer will draw up a recovery time table at the start of each financial year.

The regulations outlining the requirements for the reminder notice stipulate the following:

If a demand has been served by an Authority and instalments due under that notice, in accordance with the instalment scheme, are not complied with, then a first reminder notice shall be served.

If a second reminder is issued within the year, (the first issued having been complied with) any further failure to pay any instalment on or before the date it is due, shall result in the right to pay by instalments being lost.

Final notice

Final notices are issued in accordance with the recovery timetable. Provisions relating to the service of a final notice are as follows:

A final notice is served when

- Two reminder notices have previously been issued and paid and this is the third occasion in the relevant year that an instalment has not been paid on time, or
- A reminder Notice has been issued and remains wholly or partly unpaid and an adjustment to the charges has been made such as an amendment to a Discount, Exemption or Benefit.

A final notice is not required if a first reminder or a second reminder is not complied with within the statutory time limit of 14 days.

Summons notice

Summonses are issued in accordance with the recovery timetable. The Summons is issued if the balance stated on a reminder or final notice is not paid in full by the date as stated on the reminder or final notice

The regulations require the summons to be issued at least 14 days before the date of the liability order hearing.

The summons is served with the addition of costs as agreed by the court. These costs are set across Leicestershire, Leicester and Rutland under a process overseen by Leicester City Council and approved by the Leicestershire Treasurers. The Council will ensure that cost proposals submitted to the court for approval are fair and reasonable.

If the amount due, (plus costs) is paid and notified prior to the date of the hearing the Council will not proceed to obtain a Liability Order. If customers are not able to pay in full prior to the hearing the Council will continue to proceed with the application for a Liability Order.

Application for a Liability Order begins with the complaint made by the authority to the Magistrates Court, requesting that a summons be issued to the liable persons) to show why the sum outstanding has not been paid.

Liability order application

The Court Hearing takes place in accordance with the dates agreed with the Magistrates Court which are detailed on the recovery timetable. An interval of at least 14 days must be allowed between the issue of the summons to the defaulter and the hearing, as a liability order cannot be made unless 14 days have elapsed between issue and hearing.

At the Hearing an authorised officer of the Council will make an application to the Court for Liability Orders for a number of cases on the list. The Magistrates will hear the defence of any persons wishing to prevent the issue of a Liability Order.

Arrangements

Arrangements can be made at any time after the issue of the summons however this will not stop the Council applying for a Liability order to protect its interest and ensure the debt is paid. Any such arrangements will include costs.

In exceptional circumstances arrangements can be made prior to the issue of a summons and granting of a liability order, but these arrangements must not exceed five years to avoid any outstanding debt becoming statute barred.

Procedure after a Liability Order has been obtained

Where a Liability Order has been obtained and an arrangement has not been made, the Council has the discretion to send out a pre-enforcement letter. This is decided on a case by case basis.

The letter makes clear that the matter may be passed to the Council's enforcement agent and will not only result in considerable extra costs but the enforcement agents can legally take control of goods to clear the debt and charge for the sale of such goods.

Enclosed with this is letter is a further demand for statutory information to be returned within 14 days, to again allow the Council to consider alternatives to enforcement agent action.

Failure to make / agree an arrangement or provide information

Where no arrangement is agreed within 14 days of the issue of the pre-enforcement agent letter and enclosed statutory information request, the decision will be made on the next stage to be followed from enforcement options below.

Enforcement options

Attachment of Earnings Order - Where a debtor is employed then an Attachment of Earnings Order may be sought for unpaid Council Tax.

An Attachment of Earnings Order may be issued if a debtor does not make an arrangement to pay the debt after the issue of a summons. The Council will set up an attachment order without further notice after the Liability order is granted.

An order, once served will remain in force until the balance for which it is served is clear. The amount is deducted on a percentage basis which is applied to "net earnings" after

Income Tax, NI, Superannuation, deductions for advances of salary and other Council Tax

attachment to earnings deductions is considered. Attachable pay includes wages/salary, overtime, holiday pay, other fees, bonus, commission, or SSP.

Deduction from Welfare Benefits – Where a defaulter is receiving Income Support/Job Seekers Allowance / Employment Support Allowance or Pension Credit Universal Credit or an application for deductions may be sought.

Attachment of Members Allowances – Where the debtor is a Member of the Council then attempts should be made to make an attachment of his/her Member's Allowance. Deductions are permitted up to 40% of the allowance.

Attachment order ends before debt paid in full - This normally happens when a person leaves employment or their entitlement to the Welfare Benefit ends. When we become aware of this change, we will issue an Information Request or pre-enforcement letter prior to taking further recovery action.

Enforcement Agent Action - In these cases the Officer will refer the case with relevant information to the Council's Enforcement Agent. In most cases the minimum balance sent to the Enforcement Agents will be £125, however each account will be looked at on a case by case basis and a decision will be made whether sending the case to the Enforcement Agents is appropriate.

Further enforcement options

Senior officer case review

Where further recovery action is required under this section a Senior Officer will conduct a review of the most appropriate manner in which to proceed. The Senior Officer will carefully consider the details of the case and have regard to any debtor vulnerability as outlined earlier in this report. The Senior Officer will make a written note of any decision and reasons why they have opted to proceed with any action in relation to any significant recovery methods used including bankruptcy, committal and the use of charging orders.

Appendix 2 – Business rates

Recovery of Business Rates is governed by the Local Government Finance Act 1988 and its subsequent regulations and amendments. External enforcement agents are used by the Council for the enforcement and recovery of these debts. The recovery and enforcement of Business Rates mirror those for Council Tax in annex A except for the following variations:

Reminder notice

Within a financial year Business Rates cases will only be issued with one Reminder Notice.

Final notice

- No final is required if a reminder is not complied with within statutory time limits.
- A final is required where the amount due has changed between the outstanding reminder and after the issue of the relevant adjustment notice.

The final notice need only be served where:

- There was no right to instalments; or
- One reminder has been previously sent, and the account has fallen behind for a second occasion; or
- All instalments have fallen due.

Procedure after a Liability Order has been obtained

Information Requests are not sent out with Business Rates cases, instead in most cases the matter proceeds directly to a seven day warning letter following the liability order hearing.

Enforcement options

In Business Rates cases it is not possible serve an attachment of benefits or earnings for outstanding Business Rates.

Appendix 3 – Housing benefit overpayments

This section looks at the Council's policy in relation to overpayments of Housing Benefit (HB), Council Tax Benefit (CTB) and Council Tax Support (CTS). Council Tax Benefit was abolished from 1 April 2013 and replaced by a local scheme called Council Tax Support. Council Tax Benefit overpayments continue to be included in this policy as they may be calculated for a period prior to 1 April 2013.

Housing Benefit and Council Tax Benefit are administered by the Council on behalf of the Department for Work and Pensions (DWP). This policy formalises the principles that apply to the calculation, administration and recovery of HB, CTB and CTS overpayments.

An overpayment is where an amount of benefit/support has been paid to an individual who had no legal entitlement to it. Overpayments are usually recoverable and the Council has a duty to ensure all sums are recovered.

This policy does not apply to overpayments of Housing or Council Tax Benefit that are deemed irrecoverable in line with the benefit regulations and are not classed as a debt owed to the council. An irrecoverable overpayment is an overpayment caused by an official error where the claimant or a person acting on his behalf or any other person to whom the payment is made could not, at the time of receipt of the payment or of any notice relating to that payment, reasonably have been expected to realise that it was an overpayment.

Overpayment of Council Tax Support is classed as a Council Tax discount so is therefore recovered under the normal procedures for Council Tax Recovery see Annex A.

Reasons overpayments occur

Overpayments can occur in the following circumstances:

- A claimant fails to notify the Council on time or at all of a change of circumstance that reduces their entitlement;
- A claimant or landlord provides incorrect or false information
- Delays or mistakes have occurred in processing the information

Prevention of overpayments

Overpayments can be difficult to administer and recover and can cause financial difficulties for people who have been overpaid. To help reduce the level of overpayments we will ensure that:

- Claimants are informed and reminded of their duty to report changes in their

circumstances; in letters, leaflets and other forms of communication with claimants and other members of the public

- Information will be processed quickly and accurately
- Underlying entitlement (a calculation of benefit entitlement during the overpayment period) will be calculated where appropriate to reduce overpayments in line with the benefit regulations

Recovery methods

Officers will determine the most efficient and effective method of recovery on a case-by-case basis. The available recovery methods are as follows:

- Reduction through underlying entitlement
- Deduction from rent account when overpayment relates to end of liability only
- Deduction from rent account where tenant / housing agrees in writing
- Deductions from arrears due for same period
- Deductions from current housing benefit entitlement
- Deductions from other benefits
- Direct Earning Deductions
- Sundry Debtor Invoice (arrangement)
- Court Order
- Collection via collection agents

If the option selected does not clear the full balance owed, then Officers will proceed with the next most effective recovery process.

Deductions from current HB entitlement

Recovery may be made direct from the claimant's HB by a series of deductions over a number of weeks. The recovery rates are set by government in an annual adjudication circular.

Other benefits

The Council may ask the DWP (Debt Management Team) to recover an HB overpayment by deduction from certain DWP benefits. Eligible benefits include:

- Universal Credit
- Attendance Allowance
- Income Support
- Jobseeker's Allowance (income based)
- Jobseeker's Allowance (contribution based)
- Disability Living Allowance
- Personal Independence Payments
- Employment & Support Allowance (income based)

- Employment & Support Allowance (contribution based)
- Incapacity Benefit
- Industrial Death Benefit
- Industrial Injuries Disablement Benefit
- Carer's Allowance
- Maternity Allowance
- State Retirement Pension
- State Pension Credit
- Severe Disablement Allowance Widows Benefit
- War Pension
- War Disablement Pension
- Bereavement Benefit

These deductions can only be made where the claimant has failed to notify the Council of relevant information or misrepresented their claim. Deductions will only be made in line with guidance provided by the DWP in Guidance on HB/CTB G20/2009 and by use of approved referral forms and processes. Where the DWP are unable to commence deductions, they will write and advise the Council. In these cases, alternative recovery methods will be considered.

Appeals

A person affected by a benefit overpayment has the right of appeal against:

- The decision that an overpayment has occurred
- The decision that it is recoverable
- The decision that it is recoverable from them
- The rate of recovery

A person affected is defined within the regulations and include the claimants, their partner, a claimant's representative or a landlord.

A person cannot appeal against the Council's discretion as to whether or not to recover an overpayment.

All appeals will be dealt with in accordance with the Housing Benefit and Council Tax Benefit(Decisions and Appeals) Regulations 2001.

Financial hardship

If recovery of an overpayment causes financial hardship, the claimant can make a request for the deductions to be reduced. In order to establish if the claimant is suffering financial hardship, it is advisable to do an income and needs comparison. Officers will have particular regard to cases where the claimant or their partner is

vulnerable.

Suspending Recovery

In cases where an appeal or formal complaint is received, the Council will consider suspending further recovery action. Officers will place a note on the case record that the matter is in dispute and will monitor the account for any progress in respect of the appeal or complaint.

Sundry debtor invoice

The default position for recovery is by sundry debtor invoice. Officers will ensure that invoices are sent quickly and contain relevant information as outlined in appendix F of this policy.

County court

Customer Services in conjunction with finance will develop and maintain local procedures in relation to collecting debts through court. The following key principles will apply:

- Applications will be made to hmcts-service.gov.uk via the N322A form.
- The form will be approved by legal team.
- Only debts in excess of £300 will be referred to court.

Once the order is approved the Council may take further recovery action. The enforcement action will depend on the debtor's circumstances.

Warrant of execution

Officers may request a warrant of execution to enable the courts enforcement agent to distrain goods.

Charging order

Officers may apply for a charging order in respect of the debt.

Appendix 4 – Rent

The recovery of debt in respect of housing rents is in accordance with the Housing Act 1985 and subsequent amendments and the Pre-Action Protocol as set out by the Court.

The payment of rent is the primary responsibility of every tenant of Oadby and Wigston Borough Council and this is reflected in obligations set out in the Tenancy Agreement.

The Community Income Team will actively pursue rent arrears owed and will maintain regular contact to those by the following means:

- Telephone
- Text Message
- Letters
- Home visits
- Email

Rent statements will be provided twice a year in a comprehensible format showing rent due and payments made during the previous 13 weeks. Copies of rent statements will be provided upon request by the tenant, in the same format from the date upon which arrears first arose, showing all rent due and the dates of all payments made with their respective amounts and details of whether these were through Housing Benefit or by the tenant.

First contact

The tenant(s) will be contacted after a maximum of two weeks' rent arrears have accrued in order to discuss the cause of the arrears, their financial circumstances, their likely entitlement to a range of benefits and agree a plan for the repayment of the debt.

Second contact

Second contact will be made stating the consequences of continued non-payment of rent. Assistance will be offered with applying for Benefits and in addition referrals to other support agencies will be made for those who are affected by any of the following:

- Experiencing debt problems not just with the Oadby and Wigston Borough Council
- Vulnerability.
- Suffering from medical conditions that would affect their ability to make payments and apply for relevant benefits.
- Unable to read or write or have limited ability to do so.

Third contact

Every effort will be made to establish effective ongoing liaison with Housing Benefit Departments, third party referrals and with the tenant's consent, making contact with other relevant departments before commencing repossession action.

Officers will work together to resolve any Housing Benefit problems and if the rent arrears are part of a general debt problem, advice will be given to the tenant to help them seek assistance from debt advice specialists such as the Citizens Advice Bureau, debt advice agencies or other appropriate agencies as soon as possible.

If a tenant has accumulated arrears equivalent to four weeks rent and there has been no response from the tenant, or a previous arrangement to pay has not been adhered to, a letter will be sent warning that a Notice of Intention to Seek Possession will be served seven days from the date of the letter. It will be made clear that this is the first step in legal proceedings leading to repossession of the property.

Notice of intention to seek possession

Before a Notice is served the following steps will be carried out.

- A copy of the Notice will be served on each tenant where a joint tenancy exists.
- There will be a minimum of 28 clear days between service the date of service of the Notice and the date on which possession proceedings will be begun. In addition, this date must be a Monday.
- All the relevant grounds for possession as laid out in Schedule 2 of the Housing Act 1985 must be included: A two-year rent statement will be included, or where the tenancy duration is less than two years, a statement from the tenancy start date. This statement will clearly show amounts due and sums received with a running balance of rent arrears outstanding, thereby complying with CRP (55) of the Pre-Action Court Protocol.
- The Notice of Intention to Seek Possession will be hand-delivered wherever possible so that our tenants can be made aware that this is the first step in legal proceedings leading to repossession of the property and understand the seriousness of their situation.

Pre-court action

From the date of service of the Notice of Seeking Possession, efforts to make contact with our tenants will remain ongoing. A pre-court letter will be sent and a home visit will be carried out within the 28-day period of the Notice in order to discuss the situation with our tenants and establish as much up to date information as possible, thereby trying to avoid possession proceedings.

Liaison with relevant third parties such as the Citizens Advice Bureau or a Housing Support Agency will still be carried out by officers during this time.

Depending on the level of arrears, possession proceedings for rent arrears will not be started against a tenant who has demonstrated that they have:

- Provided all the evidence required to process their Housing Benefit claim.
- A reasonable expectation of eligibility for Housing Benefit;
- Paid other sums due not covered by Housing Benefit.

Court proceedings

Officers will make an application to the Court for a Hearing to be set for non-payment of rent. A letter and witness statement will be prepared by officers and a copy will be sent to the tenant and the Court.

Depending on the level of the rent arrears and the current situation, officers will actively pursue either of the following Orders at the Court Hearing:

- A Suspended Possession Order – this order requires the tenant to pay the current weekly rent plus an agreed amount off the arrears. If the tenant does not pay as set out in the Order and breaches the agreement, then officers can apply to Court for a warrant of eviction.
- An Outright Possession Order – Officers will request Possession at the Hearing within 7, 14 or 28 days. This means that an eviction warrant can be applied for within that specified time unless the full balance and court costs are paid.
- Adjournment – Officers will request that the Court Hearing is adjourned and set for another time. This is usually in cases where a substantial payment has been made to reduce the arrears significantly and the balance outstanding is relatively low. In addition, an order for repayment of the balance may be requested.

Following a hearing officers will write to the tenant to confirm the result. The letter will:

- Set out the terms of the Order
- Explain the consequences of breaching the Order
- Set out the costs added to the debt.
- State the date from which payments must be made.

Pre-eviction action

If there is a breach of the Order, officers will both visit and send a letter to the tenant in order to explain the severity of the situation, the letter will include:

- The amount of the breach

- The Housing Benefit or Universal Credit situation
- Information on referrals to other agencies for help and assistance
- The consequences of the breach – those being an application for an eviction warrant.

If payment is subsequently made to bring the order up-to-date, eviction action will not be pursued at that stage.

In most cases, officers will not withdraw the request for eviction unless the full amount of the rent arrears and costs are paid. If the rent account and court costs are cleared before the eviction, this will end the warrant and the eviction will be cancelled. All decisions will be made based on the individual merits of the case.

Officers will advise other parties of the eviction if relevant to the case.

The Court will notify officers of The Council if an appeal to suspend the eviction has been made by the tenant and attend the Hearing date.

Tenants can request to see Money Advice at the Court and ask for them to be present at the Hearing.

Eviction for rent arrears

If an appeal to suspend the eviction has not been made by the tenant and/or the rent arrears and costs are not cleared in full, then the eviction goes ahead.

Entry will be forced by the officer and the Bailiff if access is not gained through wilful measures.

If the tenant is present at the property Officers and the Bailiff will explain that they are being evicted from their home and asked to leave the property.

A Notice under the Local Government (Miscellaneous Provisions) Act 1982 will be served upon the tenant giving 28 days from the date of the Notice to collect their goods from the property; otherwise all items will be disposed of.

If the tenant is not present, the Notice will be served to them at their last known place of residence, allowing 28 days within which to collect their goods.

Officers may advise the tenant to approach the Housing Options Team for advice.

Appendix 5 – Former tenant rent arrears

As rent collection is one of the Council's primary sources of income it is therefore essential that both current and former tenant arrears be kept to a minimum and having robust and effective systematic Former Tenant Arrears strategy is a necessity.

Officers of the Council will meet the following criteria:

- Must tackle former tenant arrears at the earliest stage so that the Council's income is maximised.
- Must ensure that tenants are aware of their responsibilities to the Council before and after the tenancy agreement is terminated.
- Give advice and assistance on debt management to former tenants when needed. To provide former tenants and their representatives with accurate information relating to all accounts attached to their former tenancy.
- Must ensure where possible that forwarding addresses are obtained from all tenants terminating their tenancies and that any arrears balances are cleared at or before termination.
- To ensure that all former tenants who have vacated the Council's properties with rent arrears are traced after a period of no more than three months and their forwarding address recorded.
- Must ensure that former tenant arrears are dealt with and monitored in accordance with this policy.
- Former tenants must be encouraged to agree to a repayment plan that is affordable and sustainable. Income and expenditure detail must be used as a tool to measure the affordability of and agree a repayment plan.
- To commence legal proceedings when a repayment plan is not maintained or has failed.
- In cases where former tenant arrears are related to a deceased tenant, the Council will only recover funds from the estate. If there are no funds in the estate the arrears will be written off.
- To ensure the Council's principles of customer care and equality are fully adopted in the former tenants' arrears recovery procedures.

Officers will send letters to every account with a Former Tenant debt balance of more than £30 where a forwarding address is known.

When a property becomes void

It is important that when a tenant advises that they wish to end their tenancy, officers carry out checks to find out whether there is an amount outstanding on the account.

The officer will also assess the rent charge due up to the end of termination and will pursue for full payment of the account or agree a repayment plan.

The Housing Benefit Section must be notified when a Notice to Terminate Tenancy is received to enable them to proactively avoid overpayments.

Following a void date

Where the forwarding address for an outgoing tenant is known, a former tenant standard arrears letter **1** must be sent. This letter allows the debtor a period of 14 days to contact the Council and discuss an arrangement to repay any outstanding debt.

After 14 days

If no response is received after 14 days, former tenant standard arrears letter **2** must be sent out providing the debtor with an additional seven days to either to settle the debt in full or to contact the Council and agree a repayment plan. This is followed by a letter from the Legal team.

When a response is made

When a response is received, an agreement must be acknowledged and a letter confirming the payment plan will be sent. The letter (agreement) will specify clearly the amount agreed and include a repayment schedule.

When negotiating a payment plan, the former tenant's employment information along with income/ expenditure details must be considered and recorded. This information will enable officers to determine the correct amount to pay.

However, if a former tenant is receiving a state benefit such as Job Seeker's Allowance, Income Support or Pension Benefit, proof of this income must be presented. In this scenario a minimum weekly amount of £3.70 to £5 is provisionally recommended and this must be reviewed within a three month period. For those former tenants on a low income, agreements for less than the Department of Work and Pensions' agreed welfare benefit deduction would not be accepted.

When no payments are made

When a former tenant has made an arrangement to pay the debt and has failed to pay as per agreement, the officer will recommend and seek approval to apply to a Small Claim Court or Money Claim Online, to recover that debt. The claim is pursued only if

the arrears are below £250, and the case is considered not to be cost effective or the former tenant has no other debt with the Council that could legally be pursued.

In this scenario, the account will be put forward for a write-off as it is uneconomical to pursue. However, the debt could be recovered in the near future should a former tenant be subsequently located.

Officers must also check whether there is a Court Order in place before recommending another court action. When a Court Order is already in place, the officer should seek to enforce the order by applying either one or more of the following actions:

- Application for you to attend Court for questioning.
- Application for Attachment of Earnings Order with your present employer
- Warrant of execution by Bailiffs against goods owned
- Application for a charging order on any property the debtor may own or is purchasing under a mortgage.

Where Forwarding address is not known

Where a former tenant has vacated their property with outstanding rent arrears and has not provided a forwarding address, tracing will be carried out over the following three months in order to allow officers to obtain a forwarding address before considering a request to write-off the debt.

The Officer will search for a forwarding or next of kin address on:

- Tenancy files
- In the Homelessness register, and
- In the Electoral Role (primarily older debts).

The Council will use a Credit Tracing Service to search for addresses of former tenants. A second trace is carried out for accounts with a balance of more than £250.00 and one trace for account which is below £250.00 in value.

Debts below £250 where a payment plan is not in place will be referred to a Recovery Agent for recovery, which will incorporate tracing.

These actions are not exhaustive and will be supplemented by telephone calls (where there is a valid phone number) and visits by officers where possible.

However, when all efforts to locate the former tenant have failed, consideration should be given to writing off the debt according to the policy. This 'write off' process does not actually clear the debt; the debt is still owed and if contact is made with a debtor after 'write off' the debt must still be pursued.

Incentive to Maximize the Collection of Former Tenant Income within a shorter period of time

- If a former tenant clears 75% of the total debt [this includes Court Costs, Rent Arrears and Repair Charges] within a period of three months, he/she will be qualified to benefit from a 25% discount on the remaining balance.
- If 75% of the debt is to be cleared between a periods of six to 12 months, then a discount of 5% is applied.

Best Practice in Recovery of Former Tenant Arrears

It is important to identify the best practice in minimising former tenant arrears by demonstrating an effective performance in the income recovery.

The following are considered to be the best practices:

- Collect or write – off.
- The use of tracing.
- In time consider in-house officer
- Provide incentive to debt: e.g., % reduction for clearing the arrears in one payment.
- Consider reduction if paying by direct debit.
- Performance monitoring of former tenant income collection

It is important that the Council understands the cause of current/former rent arrears and why people accrue arrears. Consideration will be given to those on a low income, when considering proper advice and support.

To support:

- The Council will conduct background checks of a tenant's vulnerability and communication needs.
- Check debts and County Court Judgements before letting properties.
- Apply early action specifically for accounts where Housing Benefit payments are in place.

Appendix 6 – Other income and sundry debts

The default position for recovery of all income other than those relating to revenues, benefits and rents is by sundry debtor invoice. Examples of sundry income raised by the Council include:

- Income for goods and services (e.g., Wasp nest removal)
- Periodic income (e.g., licensing fees and sports grounds)
- Recovery of services provided to other bodies
- Rental payments where the Council operates as the Landlord
- HR costs

The responsibility for the raising of individual income invoices is held by Heads of Services and those outlined on the Council's scheme of delegation. Sufficient information must be provided as outlined in the main body of this policy to allow the debt to be raised using the standard invoice provided by the Integra system. Debts must be initiated by the responsible service areas to ensure appropriate segregation of duties.

Service providers must endeavour to obtain payment in advance of sundry debt or at the time of service delivery where permissible. Sundry debt accounts should only be raised where payment in advance for a service is inappropriate.

Regard to efficiency and the cost of raising income should be considered. A minimum value of demands can be determined by individual Heads of Service and must be notified to the Head of Finance.

A consistent method of recovery should be pursued for all sundry debtors:

- Except in the case of a demand payable by instalments or as otherwise contractually agreed, the settlement term for all demands will be within 30 days.
- Where no payment or arrangement to pay is received within 30 days of the income the Council will send a reminder notice.
- Where no payment or arrangement to pay is received within 14 days of the reminder notice the Council will send a final notice.
- Where no payment or arrangement to pay is received within 14 days of the final notice the Council will refer the debt to the contracted enforcement agent who will pursue the debt using agreed methods of recovery (e.g. home visits, out of hours calls and tracing).

As outlined in the enforcement agent contract, details of all referred debt will be provided to finance on a periodic basis, along with any recommendations for write off. The status of debts reported will be communicated to relevant Heads of Service to review for write off. Ownership of all sundry debts rests with the originating services

and they can issue an instruction to cancel an invoice. It is the responsibility of the originating services to correspond with or discuss with the debtor issues relating to the validity of the debt.

Where legally permissible, the provision of future services to the debtor will be suspended until outstanding debts are settled.

Other income not originating with the Council

In the case of court costs, the Council is not directly responsible for raising or recovering debt. These are dealt with by the relevant court which has conducted a prosecution. If a costs order is made, the defendant is ordered to pay an amount and can be permitted to pay in instalments.

The legal team will advise Finance of the outcome of the case in respect of court costs. Finance will communicate statements received from the court on a monthly basis to the legal team to allow the debt to be managed.

If payment is not made by the debtor, as outlined in the statements, relevant enforcement action will be taken, as determined by the legal team. Methods of recovery pay include:

- A warrant of execution (aimed at assets of goods owned)
- An attachment of earnings order (aimed at wages or salary assets)
- A third-party debt order (aimed at saving assets)
- A charging order (aimed at property land or investment assets)

The value of the debtors due to the Council, as advised by the Court at 31st March each year will be accrued into the Statement of Accounts as required.

Court costs

Court costs arise when the Council successfully conducts a prosecution. The final amount of costs agreed will vary from case to case depending on matters such as the aggravating and mitigating factors, antecedents and the Defendants means. If a costs order is made, the defendant is ordered to pay an amount and can be permitted to pay in instalments.

A sub account will be attached to the tenancy in order to recover court costs.

Where payments are not made:

If the debt is a criminal debt the Magistrates Court ordinarily collects the costs on behalf of the Council under the terms of a Collection Order. If the cost is on a monthly term the court will send monthly BACS or cheques but if it is in one payment they will send one payment accordingly. If the Defendant defaults the court is not under a duty to inform the Council. The onus is on the Council to monitor the account. Therefore, the Finance Team will notify the legal team who will liaise with the court in

this regard to seek enforcement.

If the debt is civil before a county court and the Respondent has not paid, Finance will notify the legal team. The legal team will issue a letter stating that non-payment of the debt will result in further legal action. Enforcement action will then be taken by the Legal team.

The Legal team can enforce debt recovery by any of the methods listed below. Each method is directed at a different aspect of the Respondent's assets and the legal team will determine the most appropriate method to recover costs in line with this policy.

- A warrant of execution (aimed at assets of goods owned)
- An attachment of earnings order (aimed at wages or salary assets)
- A third party debt order (aimed at saving assets)
- A charging order (aimed at property land or investment assets)

In determining any enforcement the Council will have regard to to:

- The costs of the action versus the revenue derived from it
- The information in the Council possession concerning the debtor
- The value and age of the debt
- The vulnerability of the debtor

The above list is not exhaustive.

Human Resources (HR) costs

HR costs arise in situations where there is a reclaim of:

- Post entry training;
- Relocation expenses;
- Car loans;
- Overpaid salary to former employees.

These amounts fall due under the terms of contract so the HR team will ensure the debtor is aware of the balance due by writing to the individual and by requesting an invoice is raised by Finance. Finance will continue to monitor repayment of the balance owed. Where payments are not forthcoming, they will advise HR who will consider further enforcement action through breach of contract and will notify the legal team accordingly.

Licensing costs

Costs arise in relation to annual premises licence fees. Where necessary these fees will be invoiced by the Finance team who will monitor the account. Where a fee is unpaid the Finance team will notify the licensing team who will consider suspending or revoking the licence and provide advice in relation to any further recovery action

required. Even if a premises licence is suspended or revoked the will still be due and recoverable as a civil debt.

Works in default

Where the Council carries out works in default of a notice – for instance, environmental health notices – costs incurred will be recharged via an invoice from the Environmental Health Team. The charge will be engrossed to include the Council's costs, such as officer time, at rates calculated by the Finance Team.

Non-payments will be chased to the Finance Team as sundry debt. If the party or parties incurring the cost are unable to pay, the Council reserves the right to place a charge against the liable person(s) property. This will be done by the Legal Team.