

CABINET

**Venue: Town Hall,
Moorgate Street,
Rotherham. S60 2TH**

Date: Wednesday, 5 June 2013

Time: 10.30 a.m.

A G E N D A

1. To consider questions from Members of the Public.
2. To determine if the following matters are to be considered under the categories suggested in accordance with the Local Government Act 1972.
3. To determine any item which the Chairman is of the opinion should be considered as a matter of urgency.
4. Declarations of Interest.
5. Minutes of the previous meeting held on 22nd May, 2013 (copy supplied separately)
6. Supporting People Programme - Proposed Governance Arrangements (report herewith) (Pages 1 - 5)
 - Chief Executive to report.
7. Proactive Insolvency for Council Tax and Non Domestic Rates (report herewith) (Pages 6 - 44)
 - Director of Finance to report.
8. Exclusion of the Press and Public.

The following items are likely to be considered in the absence of the press and public as being exempt under Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended March 2006) (information relating to the financial or business affairs).
9. Rationalisation of the Property Portfolio - Land off Ferham Road, Holmes (report herewith) (advance notice given) (Pages 45 - 48)
 - Strategic Director of Environment and Development Services to report.
10. New Application for Hardship Relief 2013/14 (report herewith) (advance notice given) (Pages 49 - 51)
 - Director of Finance to report.

ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS
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1. Meeting:	Cabinet
2. Date:	5th June 2013
3. Title:	Supporting People Programme – Proposed Governance Arrangements
4. Directorate:	Resources Directorate, Commissioning, Policy and Performance

5. Summary

- 5.1 The Supporting People Programme Governance Framework was determined by the Department of Communities and Local Government (DCLG) until 2010. The funding and administration of the Programme is no longer regulated by DCLG, allowing arrangements for governance to be locally determined.
- 5.2 This report proposes changes to the governance arrangements that will strengthen the role of Cabinet Members across Council portfolios putting them firmly at the heart of decision-making on spend and service direction.
- 5.3 The proposals will raise the profile of the Supporting People Programme and redefine its strategic contribution to Council priorities.
- 5.4 Specific proposals are:
- The terms of reference for the current SP Commissioning Group and the Core Strategy Group are amalgamated to form a 'Supporting People Programme Strategic Group' with senior representation from NAS, CYPS, Public Health, and key strategic partners.
 - All issues requiring agreement and/or decision-making that emerge from the Strategic Group to proceed to the appropriate Cabinet Member.
 - An annual report to be tabled at full Cabinet to agree the plan for the year ahead.

6. Recommendations

- 6.1 **That portfolio holders agree the recommendations contained in this report.**
- 6.2 **That this report be tabled for formal consideration at Cabinet.**

7. Introduction

The vision and direction of the Supporting People Programme aligns with the Prevention and Early Intervention agendas in the Health and Wellbeing Strategy and the Council's Corporate Plan. The main aim of the programme is to influence social inclusion and enable vulnerable people (over 15 years) to maintain or to achieve independence through the provision of housing-related support. Its impact on citizens extends at its broadest across all Council Member portfolios and all Directorates.

The SP programme is commissioned mainly from the Voluntary and Community Sector (VCS) and Registered Social Landlords. In the main, services that are commissioned are targeted at customers who do not meet the Council's eligibility criteria for access to social care services.

The key priority groups are:

- People who have been homeless or rough sleepers, including families with support needs.
- Ex-offenders and people at risk of offending and imprisonment.
- People with disabilities and long term conditions, this includes people with learning difficulties, people with mental health problems, and people with HIV and AIDS.
- People at risk of domestic violence
- People with alcohol and drug problems
- Teenage parents
- Older people
- Young people at risk

Prior to 2010 the SP programme operated at arms length from revenue funded Council services, bringing together a number of housing related funding streams across housing, health and probation. The SP Programme had national direction from the DCLG through an established framework of governance and Key Performance Indicators, and taking direction from Local Strategic Partnerships.

Since 2003 the Rotherham Programme has been managed via a Commissioning Body, with representatives from NAS and CYPS, Rotherham PCT, and South Yorkshire Probation Service. Until the ringfence arrangement ceased in April 2010, the SP Commissioning Body reported directly to DCLG.

Currently the Programme is funded by Formula Grant within the Neighbourhoods and Adults Services (NAS) Directorate, and the DCLG steer has been removed. Issues arising from the Commissioning Body requiring decision-making or endorsement proceed to the Cabinet Member for Adult Social Care. The original governance arrangements are now at odds with the usual democratic Council processes.

The Programme was reviewed in 2012/13 to inform future funding arrangements, strategic direction, and governance arrangements.

Summary of findings:

- The review indicates that the services available through the SP Programme are well regarded and highly valued by more than 11,000 vulnerable people, from across the priority groups, living in Rotherham. The Programme provides services which are, in the main, good value for money and effective.
- The review was able to provide evidence that SP services meet key targets to assist people to acquire, regain and maintain skills for independent living, and promote healthier lifestyles and lifestyles that divert people from crime and offending behaviours.
- The review has shown that the Programme is poorly understood, and that work is needed to embed its agenda within the NAS Service Plan, and to link the Programme into the wider Council strategies and plans.
- The review shows that the roles of strategic partners are under review within their own organisations and there is a need to rethink their contribution.

Imminent changes to the structure and governance of the local NHS, which include a central role for the local Health and Wellbeing Board; along with changes to the national governance of Probation Services, and the transfer of Public Health responsibilities to the Council, make this an opportune time to review the governance arrangements for the Supporting People Programme. Future arrangements should allow the Programme to have the maximum impact on Council Member portfolio areas and fully support Health and Wellbeing priorities.

8. Current Arrangements

SP Commissioning Body

The Commissioning Body makes recommendations about Programme priorities, and resource allocation, and acts as budget-holder for the SP budget.

Where executive decisions are required, recommendations progress to the Cabinet Member for Adult Social Care.

Membership:

- Cabinet Member for Safe and Attractive Neighbourhoods (Chair)
- Rotherham PCT(now RCCG) – Assistant Chief Operating Officer
- Rotherham Probation – Assistant Director
- RMBC CYPS – Director of Safeguarding
- RMBC Commissioning – Strategic Manager

Also,

- Cabinet Members for Adult Social Care; and Children; and Young People, and Families are invited for items of interest to their portfolios

N.B Partner influence and attendance at this group has deteriorated since the Programme started as organisational structures have changed and priorities have shifted.

Core Strategy Group

Core Strategy team members form the expert group who are the authors of the Supporting People Plan, and advise the Commissioning Body.

Formal membership consists of Service Managers across all stakeholder partner organisations, who have commissioning interests in the client groups served through the SP Programme.

N.B Attendance at this group has deteriorated since 2010, membership has drifted from senior managers to operational staff without delegated powers, which has diluted the team's impact.

Provider Forum

Membership consists of representatives of all providers. Non-voting reps attend the Core Strategy Group. This is a vibrant group, which works collaboratively and is well attended.

Inclusive Forum

Membership consists of tenant and user representatives from all provided services. Providers support good consultation through this group and sessions are well attended.

10. Proposal

It is recommended that:

- The responsibilities of the SP Commissioning Group and Core Strategy Group are amalgamated to form a 'Supporting People Programme Strategic Group' with senior representation from NAS, CYPS, Public Health, and key strategic partners.

Proposals emerging from the Strategic Group are taken through NAS DLT and CYPS DLT (and to the relevant partner Executive Meetings where appropriate) for consultation and amendment.

- Proposals to proceed for information to:
 - Cabinet Member for Children, Young People, and Families
 - Cabinet Member for Communities and Cohesion
 - Cabinet Member for Health and Wellbeing
 - Cabinet Member for Safe and Attractive Neighbourhoods.
- Proposals and items for agreement and decision then proceed to Cabinet Member for Adult Social Care.
- An annual account to be tabled at full Cabinet to agree the plan for the year ahead, including the funding allocation from the Formula Grant.

The Inclusive Forum and Provider Forum are to operate unchanged.

11. Finance

The Formula Grant allocation for 2013/14 will be £6.977M, a reduction from 2012/13 of £200K. The Strategic Director of NAS holds the SP Programme budget.

12. Risks and Uncertainties

The following risks have been identified should governance arrangements remain unchanged:

1. Council-wide understanding of the role played by the SP Programme in prevention/early intervention will not be maximised and opportunities for working together/efficiencies may not be fully realised.
2. The contribution of strategic partners in health and probation will not be maximised.

13. Policy and Performance Agenda Implications

Programme priorities align with prevention principles contained in:

- The Health and Wellbeing Strategy
- The RMBC Corporate Plan
- NAS Service Plan
- The CYPS Service Plan
- The Rotherham Housing Strategy

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ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS
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1)	Meeting:	Cabinet
2)	Date:	5th June 2013
3)	Title:	Proactive Insolvency for Council Tax and Non Domestic Rates Arrears
4)	Directorate:	Resources

5. Summary

Rotherham's in year collection rates for Council Tax (97.5%) and Non Domestic Rates (98.1%) were again very high in 2012/13. There, however, still remains a large amount of Council Tax and Non Domestic Rates cumulative arrears debt outstanding. As at 1st April 2013 in excess of £6.3m Council Tax and £2.6m Non Domestic Rates debt remained outstanding from previous years. Rotherham success in collection of these cumulative arrears has always been excellent in comparison with other Metropolitan authorities.

Although ongoing payments are being received for the majority of these cumulative debts there remain a hardcore of bad debtors who despite having the means to pay have not paid Council Tax for years and owe substantial amounts. For these debtors, the recovery methods currently being employed are proving unsuccessful.

This report outlines a proposal to resume proactive insolvency, bankruptcy and charging order action in cases carefully selected by the Revenues and Benefits service in order to ensure that future Council Tax collection is maximised. When proactive insolvency was previously undertaken by this Council between 2004 and 2008 it resulted in the collection of £636k Council Tax arrears. If the recommended proposal is accepted, Cabinet are also asked to endorse the incorporation of the proposal in an update to the Council's Council Tax and Non Domestic Rates Recovery Policy. This was approved by Cabinet in July 2010 following the Scrutiny Review of 2009. The proposed updated Policy is attached at Appendix 1 along with the Equality Impact Assessment – Appendix 2.

6. Recommendations

Cabinet are recommended:

- **Note the contents of the report; and**
- **Approve the proposal to resume proactive insolvency, bankruptcy and charging order action as part of the Council's Recovery Policy**
- **Approve the updated Council Tax and Non Domestic Rates Recovery Policy (Appendix 1) and Equality Impact Assessment (Appendix 2)**

7. Proposals and Details – Proactive Insolvency Action

7.1 Background - Despite an excellent Council Tax and Non Domestic Rates collection performance there is an increasing problem with a relatively small number of accounts for which no currently used recovery options have proved successful. Many of these accounts are owed by debtors who though owning property with equity and/or having a reasonable income have in a number of cases not paid Council Tax for many years.

Although small in number, these cases of habitual non-payment account for a substantial amount of money and in most cases the only available, remaining course of action would be an application for committal to prison. To take committal action would incur minimum court costs of between £240 and £390 in each case with little chance of successful collection of the outstanding balance.

The following table shows, as at 1st April 2013, the numbers and values involved for those Council Tax Accounts which are generally each increasing by over £1,000 each year.

Account Balance	Number of Accounts	Average Balance	Total Balance
£5,000 plus	13	£5,544	£72,070
£4,000 to £4,999	21	£4,492	£94,332
£3,000 to £3,999	83	£3,447	£286,072
£2,000 to £2,999	216	£2,375	£513,046
	333	£2,899	£965,520

These habitual non payers are contributing to the growing cumulative arrears - as at 1st April 2013 in excess of £6.3m Council Tax and £2.6m Non Domestic Rates debt was outstanding from previous years.

Although write off levels have been maintained at low levels in the past, a substantial amount of this debt will need to be written off unless additional recovery options, including insolvency, bankruptcy and charging order actions are re-introduced.

7.2 Proposal - A resumption of pro-active insolvency action, bankruptcy and charging orders action, is considered necessary to tackle specially selected cases where debtors:

- are identified as habitual non-payers;
- have the means to pay; and
- for whom all other appropriate methods of recovery action have proven unsuccessful.

This would create additional revenue for the authority as well as improving Council Tax and NNDR in year collection and have a significant positive impact on collection of cumulative arrears. It would also send out an important message that the Council is prepared to tackle those who 'wont pay' ensuring

that the vast majority of good Council Tax payers are not subsidising those refusing to pay (won't pay).

8. Finance

The Council will partner with solicitors experienced in insolvency action who will provide the service free of charge for cases which have been vetted first to ensure action is appropriate in accordance with the Local Government Ombudsman (LGO) report.

Although bankruptcy action would not be appropriate in all of the cases detailed in section 7.1, it is anticipated that for every 10 cases the following outcome could be achieved:

- Collection in 9 out of 10 cases with -
 - 6 cases making payment after service of initial legal papers; and
 - 3 cases making payment following bankruptcy through sale of assets.

9. Risks and Uncertainties

9.1 Vulnerability – The proposal is based around recommendations of the Local Government Ombudsman's (LGO) report "Can't pay? Won't pay? – using bankruptcy for Council Tax debts".

The aim is to ensure that vulnerability issues are identified prior to commencement of action to ensure that action is taken only against those we would consider to be the "won't pays" rather than the "can't pays".

The report also outlines the proposal to use Charging Orders to secure our income against properties where other action due to vulnerability is not considered appropriate. Presently, these debts would ultimately be written off.

9.2 Potential for Adverse Publicity - When undertaking any serious recovery action, such as insolvency, there is always concern that the authority could be criticised for the proportionality of its actions.

The proposal as outlined in this report would ensure that actions are taken in accordance with the LGO report and that every possible chance to avoid insolvency action will be given to debtors before proceedings commence. The ultimate aim would be to collect the money owed to the authority rather than make a debtor bankrupt or put a charge on their property.

It should be noted that when proactive insolvency action was previously undertaken by the authority we were subject to no criticism of the process which resulted in the collection of £636k.

10. Policy and Performance Implications

As indicated the proposals would see an increase in Council Tax collections which is expected to significantly reduce cumulative debt levels.

As part of the proposal, and as recommended by the LGO, an updated Council Tax and Non Domestic Rates recovery policy will be introduced – Appendix 1.

11. Background Papers

- LGO – Can't pay? Won't pay? – Using bankruptcy for Council Tax debts 2011
- Council Tax and Non Domestic Rates Recovery policy
- Council Tax and Non Domestic Rates Recovery policy equality impact assessment

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Council Tax and Non Domestic Rates Recovery Policy

Confidentiality Statement

All information in this document is provided in confidence for the sole purpose of adjudication of the document and shall not be used for any other purpose and shall not be published or disclosed wholly or in part to any other party without RMBC's prior permission in writing and shall be held in safe custody. These obligations shall not apply to information, which is published or becomes known legitimately from some source other than RMBC.

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They are all hereby acknowledged.

Approvers

Name	Date
Stuart Booth	1 st May 2013
Steven Ward	1 st May 2013
Rachel Humphries	1 st May 2013

Distribution

Name	Location
Stuart Booth	Riverside House
Account Management Team	Riverside House
Local Taxation Team	Riverside House
Benefit Assessment Team	Riverside House
Technical Team	Riverside House

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1 Introduction

1.1 Objectives and Scope

The purpose of this document is to outline the Revenues Service policies for the collection, recovery and enforcement of Council Tax and Non Domestic Rates (NDR) owed to RMBC.

1.2 Considerations

A separate detailed recovery procedure document exists which can be viewed as a background paper to this policy document.

Additionally individual SLA exists for external suppliers who provide services as part of the collection, recovery and enforcement of Council Tax and Non Domestic Rates owed to RMBC.

2 Principles of Collection, Recovery and Enforcement

2.1 The intention of the Revenues Service is to maintain a “firm but fair” approach to the collection and recovery of Council Tax and Non Domestic Rates which distinguishes between those customers who are unable to pay and those who seek to intentionally avoid paying.

2.2 We will issue prompt and accurate bills ensuring correct entitlement to discounts and exemptions.

2.3 We will make the payment of Council Tax and Non Domestic Rates as easy and convenient as possible by prompting a wide range of instalment dates and payment methods including our preference of Direct Debit.

2.4 We will give our customers a variety of options to contact us to discuss payment of their accounts:

- Face to face through the Customer Service Centres
- By telephone to the dedicated Revenues lines
- By email, in writing or through web forms on our web site

2.5 We will process changes to accounts in a timely manner in order to ensure customer's accounts are as up to date as possible.

2.6 We will promote ways to reduce customer's liability through discounts and exemptions, wherever possible.

2.7 We will promptly inform customers who fall behind with their statutory instalments or payment arrangements.

2.8 We will try to engage with the customer at every opportunity during the recovery process in order to discuss and make a suitable repayment arrangement and to avoid further recovery action. This includes clearly warning customers about further recovery actions that may happen and the additional costs and charges they may incur if they do not come to an earlier payment arrangement.

2.9 We will try to collect all debts owed where they are legally collectable, irrespective of age, in order that we can maximise revenue to the Authority to be fair to all those tax payers who have paid their liabilities.

2.10 We will review the appropriateness of each recovery option based on what we know about the customer's circumstances, their ability to pay, their past payment history and the requirement to recover outstanding monies in a timely and efficient manner.

2.11 Where appropriate, we will direct the customer to sources of debt and benefits advice.

2.12 We will regularly review accounts which are in arrears to ensure that they are subject to ongoing recovery and enforcement action.

2.13 We have a complaints procedure to enable customers to challenge us where they believe we have not acted fairly or lawfully.

2.14 We regularly review our policies and procedures and give consideration to changes in response to the feedback of Revenues and Council Officers, elected members, and representatives of local advice agencies and other stakeholders. An Officer Working Party comprising representatives from across Revenues and Benefits has considered the policy.

3 Recovery Procedures

3.1 The Bill and Payment Options

The Revenues Service is responsible for despatching annual Council Tax and Non Domestic Rates bills in March and April each year. Amended bills are despatched during the year on a daily basis for accounts where amendments have been made e.g. a change of liability or entitlement to benefit.

All bills include a monthly statutory instalment plan and payments should be received by the service prior to but no later than the payment date.

Four different monthly payment dates are offered for Council Tax (6th, 13th, 20th & 27th) and three for Non Domestic Rates (1st, 20th & 27th). Customers may amend their date by contacting the Local Taxation Section.

Direct Debit is the most efficient and preferred method of payment for the Authority and is promoted at every opportunity. It also assists customers to avoid missing payments and being subject to recovery action. Direct debits are offered on a weekly, fortnightly or monthly basis.

Other payment options include paying online, paying by telephone, paying by post and paying in person at one of the Customer Service Centres, Post Offices or PayPoint outlets.

3.2 Recovery from Reminder to Summons

The Authority has a strict timetable for recovery action which is set prior to the beginning of the financial year. The aim is to ensure that income is maximised to enable the Authority to provide services to the public of Rotherham.

If an instalment is not paid then a reminder will be sent. The reminder provides the customer with seven days in which to bring the account up to date by paying the overdue instalment.

If customers bring their payments up to date within seven days following the issue of a reminder or second reminder, they can continue paying by statutory instalments.

If, however, a third instalment is then unpaid a final notice will be issued and the customer will have forfeited their right to pay by instalments and payment of the remaining annual charge is due in full immediately.

Where payments are not made:

- To bring instalments up to date within seven days of a reminder
- In full within seven days of a final notice

a complaint will be made to the Magistrates' Court and a summons issued for the customer to appear in court on a specified date. Additional summons costs will be added to the account and must be paid together with the full Council Tax and Non Domestic Rates to prevent an application for a liability order being made at the hearing.

If payment of the full amount of the summons is made, including costs, before the hearing date then the customer does not have to attend court and no application for a liability order will be made.

If a payment arrangement is made before the hearing date then the customer does not have to attend court. However, an application will be made to the Magistrates for a liability order to be granted to secure the debt. Providing that payment of the arrangement is maintained then no further recovery action is taken. An arrangement for payment will only be made where the customer has provided full details of their income, including earnings and benefits.

3.3 The Liability Order Hearing

At the court hearing the Prosecuting Officer on behalf of the Authority must satisfy the Magistrates Court that:

- The correct procedures have been followed, that is, sending a bill, reminder and summons to the property or last known address.
- The customer is liable for Council Tax or Non Domestic Rates and that the debt is outstanding.

The Prosecuting Officer will then make application for a liability order together with summons and Liability Order costs.

The Magistrates may not grant a liability order if the customer can provide a valid defence, for example:

- The Authority has not demanded the Council Tax or Non Domestic Rates as the law sets out;
- The customer has already paid the amount on the summons;
- The customer is not the person liable for Council Tax or Non Domestic Rates;
- More than 6 years have passed since the Authority sent a bill for the amount.

It is not a valid defence if the customer is unable to pay because,

- They have applied for Council Tax Reduction Scheme (CTRS);
- They have appealed to the Valuation Tribunal against their Council Tax valuation band or Non Domestic Rates valuation or Council Tax Reduction Scheme decision.

If the Magistrates are satisfied with the evidence presented they must grant a liability order which confirms that the customer is liable to pay Council Tax or Non Domestic Rates but has not done so in accordance with the law.

The liability order gives the Authority the powers to recover the outstanding debt using a number of methods (see below).

3.4 Recovery Following a Liability Order

A liability order gives the Authority the powers of recovery as detailed in this section.

The Authority will choose the appropriate recovery option based on what we know about the customer's circumstances, their ability to pay, their past payment history and the requirement to recover outstanding monies in a timely and efficient manner.

Wherever possible the Authority will aim to clear outstanding Council Tax and Non Domestic Rates within the financial year it became due.

With the exception of proceedings for failure to provide Financial Information the Authority will pursue only one recovery option at any one time for an individual liability order.

3.5 Request for Financial Information (Council Tax Only)

Once a liability order has been obtained a notice will be sent to the customer together with an income details form requesting they supply details of their income and expenditure. The notice also contains details of what action may be taken if payment, or an arrangement for payment, is not made.

If the customer neglects to return the completed income details form or provide the required information by another means within 14 days of it having been sent then the Authority can take action that may result in a fine of up to £500 being imposed by the Magistrates' Court and costs being claimed by the Authority.

The Authority will make reasonable attempts to contact the customer to advise them of their legal requirement to provide the requested information before commencing criminal proceedings.

Should this course of action be taken and the prosecution be successful then the customer could receive a criminal record and a listing made for credit rating purposes. Should a customer knowingly supply false information they can be fined up to £1,000.

3.6 Arrangement for Payment

When agreeing an arrangement for payment we will always ask that the customer pays an amount equal to their current year's liability, plus an affordable amount in respect of any arrears. This ensures that the customer is able to maintain their payments and prevent the overall debt from increasing.

Where this is not possible due to a recent change, such as loss of employment and pending CTRS claim, a temporary arrangement will be made with an appropriate date for its review.

When making the arrangement we will:

- Have proper consideration for a customer's circumstances.
- Where we feel an offer of payment is too low we will provide clear reasons why we are rejecting the offer and indicate an amount that we believe is reasonable.
- Where appropriate, provide time for benefits and debt advice through referral to advice agencies, or if the agency informs us that the customer is receiving advice from them.
- Accept that, in some exceptional circumstances, no payment scheme is affordable.
- Respect and protect customer's rights at every stage of the recovery process.
- Recognise where the customer has other priority debts (e.g. mortgage arrears, rent arrears, utility debts, Income Tax and VAT), or debts owed to other Council departments, and ensure that a fair balance is reached between claims.
- Make allowances for poorly organised customers.

We will always try to resolve debt problems at the earliest opportunity, without letting them get out of control by advising customers, or taking appropriate action, as soon as possible after an arrangement instalment is missed.

3.7 Attachment of Earnings (Council Tax Only)

The Authority can instruct employers to make deductions directly from a customer's wages or salary to recover Council Tax debt. The deduction amount depends on how much the customer earns and is set by law.

The Authority can instruct an employer to take deductions from a maximum of 2 liability orders simultaneously for each liable party.

Where a customer's income is low an Attachment of Earnings Order may not be appropriate due to the level of deductions being insufficient to cover the ongoing charge.

The current deductions tables can be found at

www.rotherham.gov.uk/info/200028/council_tax/1507/attachment_of_earnings-employer_information.

The customer is legally required to inform the Authority within two weeks of any changes to their employment status.

3.8 Deductions from Benefits (Council Tax Only)

The Authority can request that the Department for Work and Pensions make deductions directly from a customer's Income Support, Jobseekers Allowance, Employment Support Allowance, Pension Credit Guaranteed Credit or Universal Credit at a rate which is set annually. The money deducted is sent to the Authority each month and continues until the Council Tax is paid in full, or benefit entitlement ceases.

Where a customer is not in receipt of sufficient CTRS then deductions from benefit may not be appropriate due to the level of deductions being insufficient to cover the ongoing charge.

The customer is legally required to inform the Authority within two weeks of any changes to their benefit entitlement.

3.9 Bailiff Action

The Authority will instruct bailiffs to collect the outstanding Council Tax or Non Domestic Rates debt if the customer fails or refuses to make full payment or to make and maintain an arrangement for payment, and an Attachment of Earnings or Deduction from Benefit is either not possible or appropriate.

Wherever possible and appropriate the Authority will attempt to recover monies by other means, such as payment arrangements, Attachment of Earnings or Benefit Deductions before referral to bailiffs. Before an account is referred to the bailiffs the customer will be sent notification of the additional costs involved and given the opportunity to make payment or an arrangement for payment.

The Authority's external bailiffs are certificated and abide to a SLA. Fees and charges associated with bailiff action will be charged in accordance with levels set out in the legislation and also agreed with the Authority.

When the bailiffs visit they ask for full payment and will add further costs.

Should the customer be unable to pay the amount due in full immediately then the bailiffs may agree a payment arrangement. This is covered by a 'walking possession' agreement. This is where the bailiff records an inventory of goods that can be sold to repay the debt. The customer will be asked to sign the walking possession agreement which allows the bailiff to leave the goods with the debtor. Additional fees will be added to the bill for this action. Providing payment is made as arranged there are no further costs.

If goods are subject to a walking possession agreement the customer cannot move or dispose of them without the bailiff's permission.

If the customer fails to pay as arranged and has signed a walking possession agreement, the bailiffs may re-enter the property to take the goods listed on the inventory. There are additional costs for their removal and sale, payable by the customer.

If the bailiff believes that the customer may intentionally dispose of their goods they may take 'close possession' of them. This means that the bailiff remains in the property until the debt is paid or the goods removed by the bailiff. Additional costs are added to the bill.

The bailiffs may visit the property to enforce the liability order by removing goods. If a van is used, additional costs are added to the bill.

If the bailiffs cannot identify sufficient goods to clear the debt, or cannot gain lawful entry to the property, they send a certificate to the Authority to confirm no, or insufficient, goods could be found.

3.10 Bankruptcy Action

The decision to take Bankruptcy action is a very serious one which the Authority will only take having considered all other avenues of recovery. If the court declares a customer bankrupt it could result in them losing their home and possessions to pay the debt together with significant additional costs in respect of the bankruptcy.

The Senior Technical Officer will recommend cases for bankruptcy to the Authority's Insolvency Management Panel. Before recommendation they will ensure that they have taken the following actions in accordance with LGO recommendations:

- Have checked with the Authority's Safeguarding Adults Team to ensure that the customer has no mental health issues or any other vulnerability issues that the Authority is aware of.
- Have attached to the customer's earnings where possible and appropriate.
- Have made deductions from the customer's benefit where possible and appropriate.
- Have had at least one outstanding liability order returned from the bailiffs' nulla bona.
- Have made sufficient efforts to visit the customer at their home address, where there are not concerns for staff safety, to identify vulnerability; including disabilities; and means to pay.
- Have issued a hand delivered letter warning of the consequences of bankruptcy action giving a final chance to pay.
- Other methods of contact such as telephone calls or SMS have been attempted.
- Have made attempts to urge the customer to seek independent advice.
- Appropriate sign posting to local sources of advice has been made to the customer.

In accordance with LGO recommendations the Authority's Insolvency Management Panel, comprising the Account Management Team Leader and Operational Manager, will decide if pursuing bankruptcy is a fair and proportionate action after:

- Reviewing an accurate history of the origin of the debt and attempts to recover it and clearly recording each step of recovery and its outcomes.
- Considering information about the past, present, disputed or outstanding CTRS claims or any discounts or exemptions that might be relevant.
- Assessing that there is no realistic prospect of recovering the debt by other means in a reasonable timescale.
- Gathering sufficient evidence about the customer's circumstances from all sources, including information provided by the bailiffs.
- Considering whether a customer's failure to pay and to respond to other recovery measures could arise from a disability (including a mental impairment with a long-term and substantial effect on normal day-to-day activities). Where there is an indication of mental health issues investigation into the issue will be undertaken with appropriate Council Departments before a decision on the commencement of bankruptcy action.
- Considering whether the customer's personal circumstances, including disabilities, warrants them being protected from the consequences of recovery action.

If the Insolvency Management Panel decides to proceed with the bankruptcy recommendation it will record its decision together with the information considered.

Where appropriate the Panel should:

- Recommend further actions be taken before the case is recommended again, or
- Reject the recommendation permanently.

If bankruptcy action is recommended, the Senior Technical Officer will refer the case to the Council's preferred solicitors who will deal with the actions in accordance with the Service Level Agreement. A Land Registry search and a credit check will be undertaken to establish legal ownership of property and ascertain equity in order to help determine whether a realisable asset exists to support bankruptcy action. A final letter before action will be sent warning of the consequences of bankruptcy before the Council's preferred solicitor serves a Statutory Demand as the first formal stage in a process that may lead to bankruptcy. Should the customer not agree a payment arrangement within 21 days of the service of a Statutory Demand, or if the court does not set the case aside, then a bankruptcy petition will be served.

3.11 Charging Orders

Prior to the commencement of Charging Order action the Senior Technical Officer will have undertaken the checks listed in Section 3.10, in accordance with LGO recommendations, and the appropriate actions will be recorded by the Insolvency Management Panel in the same way as with a recommendation for bankruptcy.

Charging Orders will normally be sought where bankruptcy is considered inappropriate by the Insolvency Management Panel due to the customer's personal circumstances.

If a customer owns their own property then the Authority may decide to apply for a Charging Order to be placed on it. This is similar to a mortgage and means that recovery of the outstanding debt can be made from the proceeds of sale if the property is sold at a later date.

Once the Charging Order has been obtained on a property then the Authority can apply to the court for an order to evict the owner and enforce the property's sale to recover the debt owed.

3.12 Committal to Prison

The decision to take committal action is a very serious one which the Authority will only take having considered all other avenues of recovery. The action will also incur substantial costs to the Authority which may not be recouped, particularly if the customer is committed.

The Senior Technical Officer will recommend cases for committal to the Committal Management Panel. Before recommendation they will ensure that they have taken the following actions in accordance with LGO recommendations:

- Have checked with the Authority's Safeguarding Adults Team to ensure that the customer has no mental health issues or any other vulnerability issues that the Authority is aware of.
- Have attached to the customer's earnings where possible and appropriate.
- Have made deductions from the customer's benefit where possible and appropriate.
- Have had at least one outstanding liability order returned from the bailiffs' nulla bona.
- Have made sufficient efforts to visit the customer at their home address, where there are not concerns for staff safety, to identify vulnerability; including disabilities; and means to pay.

- Have sent a letter warning of the consequences of committal action giving a final chance to pay.
- Other methods of contact such as telephone calls or SMS have been attempted.
- Have made attempts to urge the customer to seek independent advice.
- Appropriate sign posting to local sources of advice has been made to the customer.

In accordance with LGO recommendations the Committal Management Panel, comprising the Account Management Team Leader and Operational Manager, will decide if pursuing committal is a fair and proportionate action after:

- Reviewing an accurate history of the origin of the debt and attempts to recover it and clearly recording each step of recovery and its outcomes.
- Considering information about the past, present, disputed or outstanding benefit claims or any discounts or exemptions that might be relevant.
- Assessing that there is no realistic prospect of recovering the debt by other means in a reasonable timescale.
- Gathering sufficient evidence about the customer's circumstances from all sources including information provided by the bailiffs.
- Considering whether a customer's failure to pay and to respond to other recovery measures could arise from a disability (including a mental impairment with a long-term and substantial effect on normal day-to-day activities). Where there is an indication of mental health issues investigation into the issue will be undertaken with appropriate Council Departments before a decision on the issue of a committal summons is made.
- Considering whether the customer's personal circumstances, including disabilities, warrants them being protected from the consequences of committal action.

If the Committal Management Panel decides to proceed with the committal recommendation it will record its decision together with the information considered.

Where appropriate the Panel should:

- Recommend further actions be taken before the case is recommended again, or
- Reject the recommendation permanently.

If committal action is recommended, a request will be made for the Magistrates' Court to issue a summons for the customer to attend a committal hearing, whereupon the Authority will make application to the Magistrates to commit the customer to prison for failing to make payment of their Council Tax or Non Domestic Rates.

At the hearing, the Prosecuting Officer for the Authority will confirm to the Magistrates' Court that a liability order has been granted and that the bailiffs have either been unsuccessful in removing goods or that no goods of sufficient value were available to clear the debt.

The Magistrates' Court then makes enquiries as to why the customer has not paid their Council Tax or Non Domestic Rates bill and decides, following enquiries into their income and expenditure, whether they have failed to pay due to wilful refusal or culpable neglect.

There are several decisions that the Magistrates' Court can make:

- Court Order with a suspended sentence. This is a sentence to a term of imprisonment that is suspended provided the customer keeps to the conditions of the suspension. This is usually an order to pay a set amount to clear the debt. Should the customer fail to adhere

to the order the Council will apply for the customer to be brought back before the court for the sentence to be confirmed and the customer imprisoned.

- Court Order without a suspended sentence. The customer could be ordered to pay a set amount. If payments are not adhered to then the customer is ordered to return to court to give explanation as to why they have not paid. The Magistrates Court will then decide what next course of action to take.
- Remit all or some of the debt. The Magistrates Court may make a Court Order on any part of the debt not remitted.
- Take no action. The Magistrates' Court may decide that no further action is appropriate and request the case be withdrawn.
- Adjourn the case. If more information or evidence is needed before a decision can be made then the case can be adjourned to a later date.
- Committal to prison. The Magistrates' Court can decide to commit the customer to prison immediately for up to 90 days.

If the customer is summonsed to appear in court but fails to attend then the Authority will make an application to the Magistrates to issue a warrant for arrest with bail. This means that a Warrant Officer can enforce arrest and bail the customer to appear in court at a later date.

In certain cases where the customer has a history of failing to appear at court following the service of a warrant with bail the Prosecuting Officer for the Authority or the Magistrates themselves may request the issue of a warrant without bail.

If the customer does not appear at court after being bailed, the Prosecuting Officer for the Authority will make an application to the Magistrates Court to issue a warrant for arrest without bail. In this case, a Warrant Officer can enforce arrest and take the customer into police custody or straight to the Magistrates Court to appear in front of the District Judge.

3.13 Absconders

Sometimes customers may leave their property with debt still owing and without providing a forwarding address. These are sometimes referred to as 'Gone Away' or 'Absconders'.

If a customer leaves their property without providing a forwarding address we will not immediately write off the debt. We have a number of ways of tracing absconders and we will make every attempt to do so.

We may be able to trace the customer through our internal systems. If we are unable to locate the customer using in-house information, we will use a data credit company or collection agent services.

3.14 Write Off

We have an agreed procedure for writing off Council Tax and Non Domestic Rates debts, provided the relevant criteria are met.

We will only consider writing off debts where they are deemed to be uncollectible, e.g. in circumstances where we are unable to trace the customer, where they have passed away (although we will normally look to collect any outstanding amounts from the deceased's estate) or if it is considered uneconomical to pursue the debt further.

The age of the debt is not usually a reason itself to consider write off.

4 Assistance to Customers

We recognise that some people do not pay their Council Tax or Non Domestic Rates because of genuine financial or other difficulties. Although we take a 'firm but fair' approach to recovery and enforcement, it is our policy also to offer help and support to all customers who are experiencing difficulties paying at every stage of the collection and recovery process.

Although we have a duty to collect all Council Tax or Non Domestic Rates we also recognise that some customers will have financial and other difficulties that are not limited to paying Council Tax or Non Domestic Rates. Wherever possible, therefore, we will try to achieve a long term solution, rather than just recovering money that is owed now, so that the customer is better able to manage their finances in the future, and meet their future liabilities.

We recognise that some customers experience genuine hardship because of financial problems. It is our intention, wherever possible, not to add to that hardship through collection and recovery of Council Tax or Non Domestic Rates (recognising that customers do have to pay what they are liable for), but to provide the customer with help and support to resolve their finances.

We will particularly try to help and support customers in the following key ways:

- We will offer a range of payment dates and payment methods to enable customers to be able to easier maintain payments.
- We will always try to resolve debt problems at the earliest opportunity, without letting them get out of control, by advising customers as soon as possible that instalments have been missed.
- We will sign post customers towards relevant assistance, including advice agencies.
- When agreeing an arrangement for payment we will always ask that the customer pays an amount equal to their current year's liability, plus an affordable amount in respect of any arrears. This ensures that the customer is able to maintain their payments and prevent the overall debt from increasing. Where this is not possible due to a recent change, such as loss of employment or pending a CTRS claim, a temporary arrangement will be made with an appropriate date for its review.
- We will provide time for benefits and debt advice through referral to advice agencies, or if the agency informs us that the customer is receiving advice from them.
- We will have proper consideration for a customer's circumstances and financial situation, including other priority debts, when taking recovery action and making arrangements for payment.
- Where we feel an offer of payment is too low we will provide clear reasons why we are rejecting the offer and indicate an amount that we believe is reasonable.
- We will respect and protect customer's rights at every stage of the recovery process.
- We accept that in some exceptional circumstances, no payment scheme is affordable.
- We will advise customers of their possible entitlement to any discounts or exemptions.
- We also work as co-operatively as possible with advice agencies. For example, wherever possible and appropriate, at the request of an advice agency we will agree to put a hold on any recovery action for an agreed period to enable the customer to receive specialist advice which will help them make a sustainable payment arrangement with us.

5 External Specialist Suppliers

The Authority works in partnership with a number of specialist companies to recover unpaid Council Tax and Non Domestic Rates.

These companies provide additional support and are specialists in their respective areas of recovery.

External companies are used for tracing absconders, bailiff action, data matching in areas such as SPD checking; insolvency work and debt collection work.

All external companies working with the Authority are required to follow its policies and procedures at all times.

6 Glossary of Terms

Abbreviation	Explanation
CTax	Council Tax
CTRS	Council Tax Reduction Scheme
DWP	Department for Work and Pensions
LGO	Local Government Ombudsman
NDR	Non Domestic Rates
RMBC	Rotherham Metropolitan Borough Council
SPD	Single Persons Discount

7 Reference Documents

Ref. No.	Document Title	Document Ref.
1	002 - Recovery Procedure Manual (CTax & NDR)	G:\04 Account Management\Procedures\Manuals

8 Change History

Issue	Owner	Date	Change Details
1, 1 st Draft	Robert Cutts	11/4/2012	Initial Draft
1, 2 nd Draft	Steve Ward	30/4/2012	Amendments to document
1, 3 rd Draft	Robert Cutts	30/4/2012	2 nd Draft
1, 4 th Draft	Steven Ward	3/9/2012	Amendments to document
1	Robert Cutts	29/4/2013	Final version

RMBC - Equality Analysis Form for Commissioning, Decommissioning, Decision making, Projects, Policies, Services, Strategies or Functions (CDDPPSSF)

Under the Equality Act 2010 Protected characteristics are age, disability, gender, gender identity, race, religion or belief, sexuality, civil partnerships and marriage, pregnancy and maternity. Page 6 of guidance. Other areas to note see guidance appendix 1	
Name of policy, service or function. If a policy, list any associated policies:	Council Tax & Non Domestic Rate Recovery Policy
Name of service and Directorate	Revenues & Benefits, Resources Directorate
Lead manager	Robert Cutts, Service & Development Manager
Date of Equality Analysis (EA)	1st May, 2013
Names of those involved in the EA (Should include at least two other people)	Steven Ward, Operational Manager – Account Management Zafar Saleem, Community Engagement Manager
Aim/Scope (who the Policy /Service affects and intended outcomes if known) See page 7 of guidance step 1	
<p>In December 2011 the Local Government Ombudsman produced a focus report entitled 'Can't Pay Won't Pay – using bankruptcy for Council Tax debts'. One of the recommendations of the report states that Local Authority's are required to review its revenues policies for the collection, recovery and enforcement of Council Tax and Non Domestic Rates and that a document should be in place outlining these policies.</p> <p>The aim of this policy is to ensure that the document conforms to the recommendations of the Local Government Ombudsman's report (see appendix 1).</p> <p>This review affects all customers who have a liability in Rotherham to pay Council Tax and Non Domestic Rates to the Local Authority.</p>	
What equality information is available? Include any engagement undertaken and identify any information gaps you are aware of. What monitoring arrangements have you made to monitor the impact of the policy or service on communities/groups according to their protected characteristics? See page 7 of guidance step 2	
<p>Upon reviewing the number of liability orders obtained by the Account Management Team for non/late payment of Council Tax during the period October 2011 to October 2012 it was found that just 13 of 12,500 charge payers were in receipt of Disabled Relief. This data will be further reviewed under the terms of the Debt Recovery Policy and appropriate steps taken in light of the results.</p> <p>Information is gathered at the point of registration for Council Tax and Non Domestic Rates and upon application for related benefits and discounts.</p>	

RMBC - Equality Analysis Form for Commissioning, Decommissioning, Decision making, Projects, Policies, Services, Strategies or Functions (CDDPPSSF)

<p>Engagement undertaken with customers. (date and group(s) consulted and key findings) See page 7 of guidance step 3</p>	<p>Annual Council Tax and Non Domestic Rates bills are despatched to customers in March and April each year with amended bills being sent on a daily basis during the year where changes have occurred to liability. The bills include a monthly statutory instalment plan and provide notice that the Council operates a strict timetable for recovery of unpaid bills. A suite of letters and SMS templates inform the customer at each stage of the recovery process.</p>
<p>Engagement undertaken with staff about the implications on service users (date and group(s) consulted and key findings) See page 7 of guidance step 3</p>	<p>There will be ongoing engagement and consultation with key officers and service users, including the Council's Senior Leadership Team. An Officer Working Party comprising representatives from across Revenues and Benefits has considered the policy.</p>
<p>The Analysis</p>	
<p>How do you think the Policy/Service meets the needs of different communities and groups? Protected characteristics of vulnerable groups accounting for age, disability, gender, gender identity, race, religion or belief, sexuality, Civil Partnerships and Marriage, Pregnancy and Maternity. Other areas to note are Financial Inclusion, Fuel Poverty, and other social economic factors. This list is not exhaustive.</p> <p>Recovery of Council Tax and Non Domestic Rates arrears is applied consistently across all groups equally following consideration of the action being fair and proportionate. Specific allowances will be considered following the gathering of sufficient evidence about the customer's circumstances from all relevant sources.</p>	
<p>Analysis of the actual or likely effect of the Policy or Service: See page 8 of guidance step 4 and 5</p> <p>Does your Policy/Service present any problems or barriers to communities or Group? Identified by the protected characteristics of vulnerable groups.</p> <p>The policy document recognises that the Council's 'firm but fair' approach to recovery may present problems to some groups but offers support through a series of measures, having regard to disabilities in order to eliminate discrimination and advance equality of opportunity. Appropriate checks are built into our policy to distinguish between those customers who are unable to pay and those who seek to intentionally avoid paying. A range of discounts and exemptions are promoted to reduce customer liability wherever possible and customers are signposted to appropriate sources of debt and benefit advice where appropriate.</p> <p>The Council's complaints procedure enables customers to challenge decisions in debt recovery where they consider that the actions taken are not lawful or we have acted unfairly.</p> <p>Throughout the recovery and enforcement process the actions taken follow the recommendations made by the Local Government Ombudsman in their focus report entitled 'Can't Pay Won't Pay – using bankruptcy for Council Tax debts' and those actions</p>	

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are reviewed by Senior Management at key stages with checks being made to identify whether the customer has any disability or vulnerability that may prohibit them from complying with the Council's requirements in payment, for example by engaging with the Council's Safeguarding Adults Team.

The Council tenders for its bailiff services and as part of the process rigorous checks are made to ensure that the companies engaged are accredited, comply with all relevant codes of practice and work to a monitored service level agreement.

Does the Service/Policy provide any improvements/remove barriers? Identified by the protected characteristics of vulnerable groups.

It is the Council's policy to offer help and support to those customers who do not pay Council Tax and Non Domestic Rates because of genuine financial hardship or other difficulties in a number of key ways.

It is our policy also to offer help and support to all customers who are experiencing difficulties paying at every stage of the collection and recovery process. We offer a range of payment dates and payment methods to enable customers to be able to easier maintain payments; we always try to resolve debt problems at the earliest opportunity by advising customers as soon as possible that instalments have been missed; we signpost customers towards relevant assistance, including advice agencies, agreeing to hold recovery action for agreed periods to enable specialist advice to be given; we give proper consideration to a customer's circumstances and financial situation; we give clear reasons when we feel that an offer of payment is too low and indicate an amount that we believe is reasonable; we respect and protect customer's rights at every stage of the recovery process; we accept that in some exceptional circumstances no payment scheme is affordable and we advise customers of their possible entitlement to any benefits, discounts or exemptions.

What affect will the Policy/Service have on community relations? Identified by the protected characteristics of vulnerable groups.

It is unlikely that there will be any impact on community relations as the policies outlined in the document are pre-existing and managed by using tried and tested methods.

Please list any **actions and targets** by Protected Characteristic that need to be taken as a consequence of this assessment and ensure that they are added into your service plan.

Website Key Findings Summary: To meet legislative requirements a summary of the Equality Analysis needs to be completed and published.

Equality Analysis Action Plan

Time Period - 2012/2013

Manager: **Robert Cutts**

Service Area: **Revenues & Benefits**..... Tel:

01709 823320

Title of Equality Analysis:

If the analysis is done at the right time, i.e. early before decisions are made, changes should be built in before the policy or change is signed off. This will remove the need for remedial actions. Where this is achieved, the only action required will be to monitor the impact of the policy/service/change on communities or groups according to their protected characteristic.

List all the Actions and Equality Targets identified

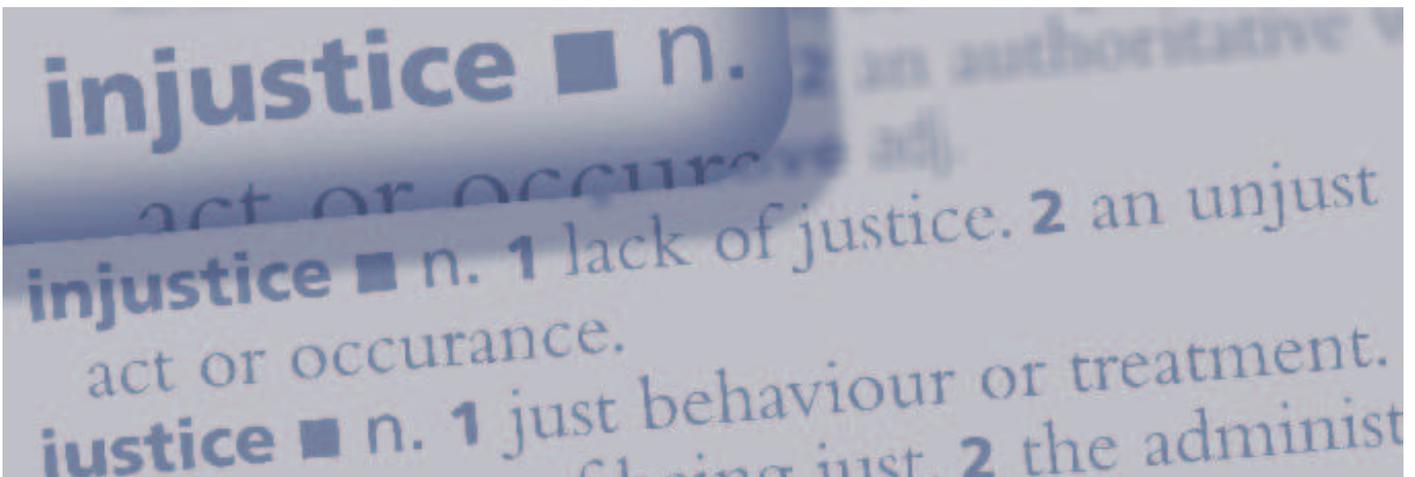
Action/Target	State Protected Characteristics (A,D,RE,RoB,G,GI O, SO, PM,CPM, C or All)*	Target date (MM/YY)
To monitor any complaints or comments regarding the policy and disaggregate by protected characteristic to see if any disproportionate outcomes are evident.	All	April 2013
Name Of Director who approved Plan	Stuart Booth, Director of Finance	Date
		1st May 2013

*A = Age, C= Carers D= Disability, G = Gender, GI Gender Identity, O= other groups, RE= Race/ Ethnicity, RoB= Religion or Belief, SO= Sexual Orientation, PM= Pregnancy/Maternity, CPM = Civil Partnership or Marriage.

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Website Summary – Please complete for publishing on our website and append to any reports to Elected Members, CMT or Directorate Management Teams

Completed equality impact assessments	Key findings	Future actions
<p>Directorate: Resources</p> <p>Function, policy or proposal name:</p> <p>Council Tax and Non Domestic Rates Recovery Policy</p> <p>Function or policy status: New (new, changing or existing)</p> <p>Name of lead officer completing the assessment:</p> <p>Robert Cutts, Revenue & Benefits Manager</p> <p>Date of assessment: 1st May 2013</p>	<p>The aim is to ensure that the Debt Recovery Policy conforms to the Local Government Ombudsman’s recent focus report ‘Can’t Pay Won’t Pay – using bankruptcy for Council Tax debts’</p>	<p>To monitor any complaints or other comments relating to the policy and disaggregate by protected characteristic to see if any disproportionate outcomes are evident.</p>



Can't pay? Won't pay? Using bankruptcy for council tax debts

Focus Report: learning the lessons from complaints

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Introduction

Some 350 councils have a statutory duty to levy and collect council tax on almost 22.7 million domestic properties. The total council tax billed for 2010/11 was £21.9 billion and the national average in-year collection rate was 97.3%.

About a quarter of the money councils have to spend on local services comes from council tax. When people don't pay, councils have two imperatives to collect tax and recover debts – the need for revenue vital for funding local services and the consequences of failing to enforce, equally, on all citizens the legal and social obligation to pay taxes.

The Local Government Ombudsmen consider complaints by citizens who claim injustice caused by maladministration or failings in services. Although the total numbers are small, we have published reports in an unusually high proportion of the complaints made to us from people made bankrupt by councils for council tax debts. A common theme in these cases is flaws in the way the councils decided to pursue bankruptcy.

Legislation sets out what councils can do to recover council tax debts including seeking imprisonment or bankruptcy – with potentially severe consequences for the individuals in debt. The latest available statistics show that in 2009/10 councils initiated at least 4,700 bankruptcy proceedings to recover council tax debts.

Councils have the lawful power to pursue bankruptcy orders against people who will not pay their council tax debts. The Ombudsman will not criticise a council for using bankruptcy and other debt recovery methods if the decision to do so has been properly made.

Maladministration in making someone bankrupt can have devastating consequences for the individual citizen and the financial costs to councils of remedying injustice can be high.

Based on our experience of complaints, we have produced this Focus report to help councils avoid maladministration when using their powers and to enable agencies that advise on debt to identify cases that should be referred to us.

October 2011

Collecting council tax and recovering debt – a summary

When collecting debts, councils are in a unique category for two reasons:

1. public policy consideration of:
 - > fairness to those citizens who do pay, and
 - > the consequences for overall payment levels if non-payers are allowed to evade their debts.
2. public law requirements to:
 - > act fairly, proportionately and within the law
 - > make decisions properly, and
 - > comply with general statutory duties in relation to disabled people, including those with a mental impairment.

The Local Government and Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992 set out councils' powers to collect and recover council tax. Adults living in a domestic property are liable to pay council tax and there is a system of discounts, exemptions and benefits for some people in specified circumstances. A council can reduce council tax on a particular property to nil if it sees a good reason to do so.

The process and powers for collecting council tax and recovering debts can be summarised as:

- > Every council tax payer is sent a demand at the beginning of the financial year and has the right to pay this by monthly instalments.
- > If the instalments are not paid, councils can pursue recovery by serving at least one reminder (or a final notice for arrears).
- > If the arrears are not paid after a reminder, the full council tax for the year falls due and the right to pay by instalments is lost. Councils can then apply to the magistrates' court for a liability order.
- > If the magistrates make a liability order and the debt is not paid, councils can:
 - make an attachment of earnings order, or
 - apply for deductions from the debtor's income support, or
 - levy distress on the debtor's goods to sell and clear the debt with the proceeds, or
 - apply to the county court (or the High Court in London) for a charge to be put on a property on which a council tax debt of more than £1,000 is owed, if it is owned by the debtor, or
 - apply to the county court (or High Court in London) for the debtor to be made bankrupt if it has a liability order for a debt of more than £750.
- > If distress on goods has been attempted and failed, councils can apply to the magistrates' court to have the debtor committed to prison.

Limitations and implications of recovery methods

Attachment of earnings can only be used if the debtor is in work and can be difficult to maintain if debtors change employers or move in and out of employment.

Deductions from benefit will recover a debt very slowly and may not be made if deductions are already being made for another debt.

If distress has failed and a council applies to the magistrates' court for the debtor to be committed to prison, the magistrates will inquire into the debtor's means. A warrant for the debtor's committal can only be issued if the magistrates are satisfied that failure to pay the council tax is due to the debtor's 'wilful refusal or culpable neglect'. If the debtor is imprisoned the council is precluded from taking any further steps to recover the debt.

An application to put a charge on a property can only be made if a council tax debt of over £1,000 has been incurred on that property. This secures the debt but it is not paid until the property is sold (but meanwhile attracts interest). When the property is sold any mortgage debts take priority and the sale may not raise enough to clear the council tax debt. Councils can apply to the court for a forced sale. This incurs additional costs to be paid from the proceeds of the sale and councils have to administer the sale.

A council can start bankruptcy proceedings if it has a liability order for a council tax debt of more than £750. The first step is to serve a statutory demand, explaining the debt that is being recovered. A debtor can ask the county court to set the demand aside on specified, limited grounds (for example that the debt is not owed). If the debt remains unpaid after 21 days and no arrangements to clear it have been agreed, a bankruptcy petition can be served in the court asking for the debtor to be declared bankrupt. The debtor will be liable to pay the council's costs.

Once the court makes a bankruptcy order, the Official Receiver can appoint a licensed insolvency practitioner as a trustee to safeguard and secure the assets of the debtor for the benefit of creditors generally. A debtor's assets can be sold to settle the debt. Trustees are entitled to payment out of the proceeds for their costs in managing the estate.

A county court can annul a bankruptcy order on the basis that the order should not have been made or that the debts and the expenses of the bankruptcy have been paid or secured.

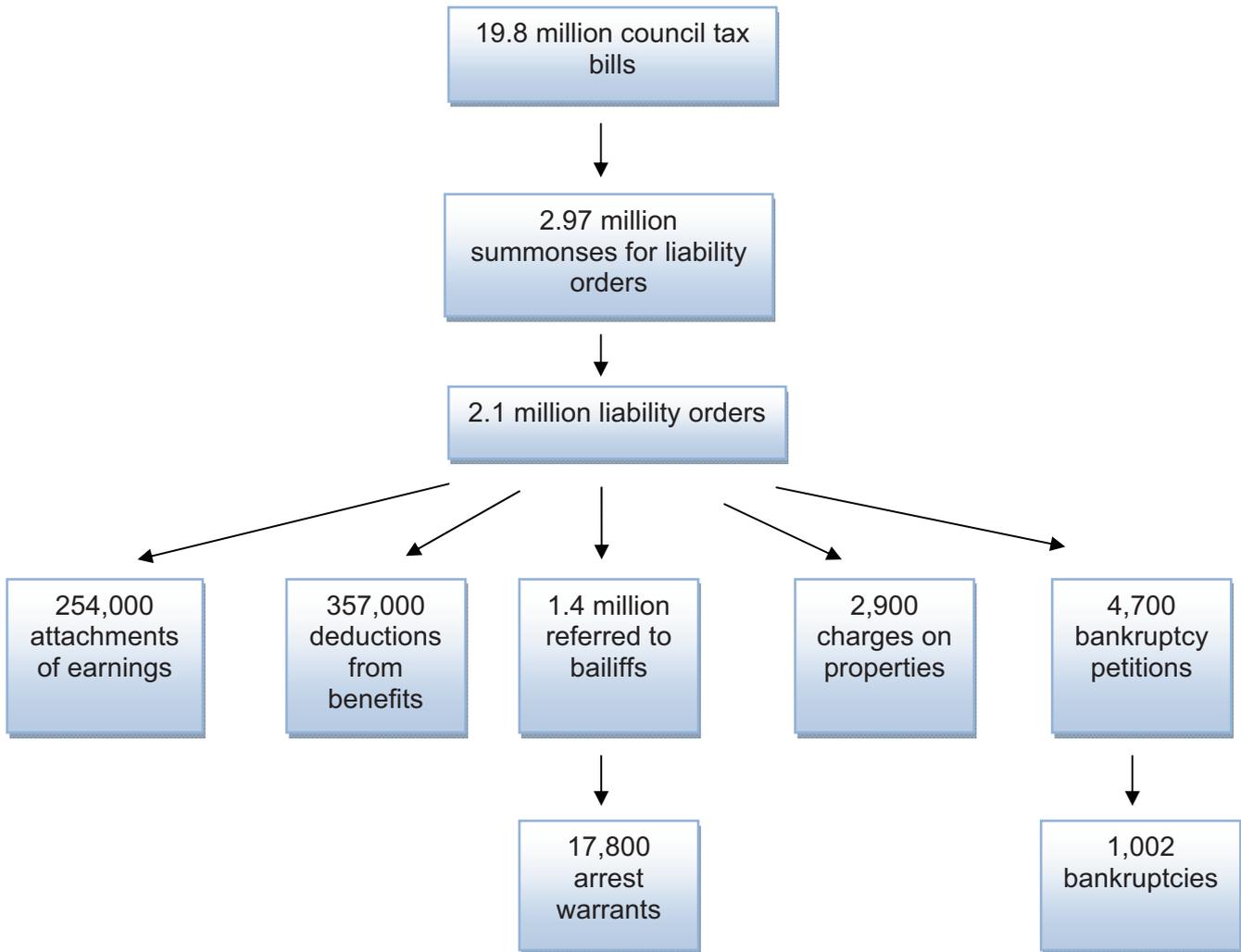
Recovering council tax

Individuals may not pay their council tax for a variety of reasons:

- > having to juggle bills and debts in order to 'make ends meet' with very low income
- > financial problems precipitated by a personal crisis
- > lack of life skills and inability to cope
- > as a form of protest, or
- > from hostility to 'officialdom'.

Whatever the reasons for non-payment, it is important for councils to have effective approaches to collecting and recovering this important source of revenue.

The diagram below shows the numbers for 2009/10¹ involved in each step and indicates the success of each measure in bringing debtors to make arrangements to pay (numbers are rounded). It is widely acknowledged that people in debt will respond to the creditor who is pressing hardest at a particular point. When people in debt seek independent help advisers will give council tax debts priority along with those where the ultimate sanction for non-payment is loss of home, disconnection, or imprisonment.



Use of bankruptcy and complaints to the Local Government Ombudsman

Councils have made more use of bankruptcy proceedings over the years. In 1992/93 local authorities in England and Wales were petitioners in less than 1% of bankruptcy proceedings brought by creditors. By 2007/08 that figure had risen to 20%².

Returns from councils for the Chartered Institute of Public Finance and Accountancy’s (CIPFA’s) Annual Revenue Collection Statistics, show that in 2009/10 councils initiated 4,732 bankruptcy proceedings to recover council tax. Eight councils accounted for 70% of these proceedings.

Factors to consider

In making decisions about using bankruptcy to recover council tax, councils need to take account of and balance various factors, including:

- > costs, effectiveness, and other implications of bankruptcy
- > the individual circumstances of the debtor

- > general equality duties
- > implications for overall payment levels if people come to believe that council tax debts will not be collected
- > impact of non-payment on revenues and the ability to deliver services to the community, and
- > equality between those who do pay and those who don't.

The relative weight and balance of these factors is a matter for each council. In some complaints we have found that there has been no policy framework for officers to work in or guidance provided about what weight to give to the factors. There have also been failures to record how these factors have been taken into account and balanced.

As might be expected, it seems harder to collect council tax in poorer areas – collection rates in the 10 least deprived council areas range from 98.4 % to 99.3% and in the 10 most deprived areas the range is from 92% to 97.3%.

The importance of collecting council tax is illustrated by the fact that, amongst the 10 most deprived areas, almost £6 million additional revenue would be available each year to the council with the lowest collection rate if it could match the performance of the council with the highest collection rate.

Case study – the need for a policy and a balanced decision

Mr J and his wife were jointly liable for council tax on their home. The amount they had to pay varied depending on changes in their entitlement to benefits, Mrs J's employment status and when their son lived with them. The council pursued Mr J for a total council tax debt of £1,071 over five years varying from £45.70 to £556.82 each year. Mr J disputed that he owed what the council claimed but, for a time, made regular payments towards the arrears. Those payments were put to the current year's liability and a delay in the council introducing a new computer system meant that he was not contacted about the earlier arrears.

When Mr J's regular payments stopped, the council sent him a letter saying that it would begin bankruptcy proceedings unless he paid all that he owed. Mr J said that he did not receive that letter, the statutory demand or the bankruptcy petition. The court declared him bankrupt in his absence.

The Ombudsman found that the council had explained why Mr and Mrs J owed the sums it claimed, that Mr J should have known that the biggest part of the debt was for a period when he could not show that he had made payments and that his claims not to have received various official notifications were not credible.

The Ombudsman also acknowledged that the council's council tax collection rates had improved since it began to use bankruptcy, but said:

I regard it as a fundamental flaw that the council should have been using [bankruptcy] without a written policy for officers to refer to in individual cases. While the council may not have been under a legal requirement to have such a policy, I consider it maladministration for an authority not to have such a policy for the guidance of its staff in such an important area of public administration. I say this because the consequences of bankruptcy can be devastating to the debtor in terms of both the loss of assets and the costs that can multiply the debt many times over. These consequences are such that I consider the council must consider the appropriateness of such recovery action in each individual case where it is used... I find that the council's actions in this case are insufficient to demonstrate that it properly took account of Mr J's circumstances, properly considered alternative courses of recovery, or gave adequate due warning before choosing the route of bankruptcy...

Case study – taking account of costs

A council pursued Mr F for a council tax debt of £839.43.

The bankruptcy process incurred costs of approximately £38,000 including VAT, legal costs of £2,260, trustee's costs of £13,459 and trustee's legal costs of £13,373 together with the disbursements and the costs of the Official Receiver.

The Ombudsman said:

The council cannot, it seems to me, turn a blind eye to the consequences to the debtor of any recovery option it pursues. Some courses will no doubt be administratively more convenient and less costly than others. But in selecting these options the impact on the debtor should be weighed in the balance. The dire and punitive consequences of bankruptcy, involving a multiplication of the debt many times over and frequently incurring the loss of the debtor's home must be factor to be taken into account ... I have seen no evidence that this relevant consideration was taken into account ... that was maladministration.

Case study – taking account of the debtor's circumstances

Mr C complained to the Ombudsman that a council was going to make him bankrupt for council tax debts.

The investigation showed that Mr C owed £6,000, had paid £600 over the previous nine years, had not kept to various arrangements to pay and had not claimed benefits, although he had been encouraged to do so. There was nothing to suggest that Mr C was disabled and there was equity in his property. The council had a policy on using bankruptcy and had followed it.

The Ombudsman found no fault in the council's decision to apply for Mr C to be made bankrupt.

General equality duties

Since December 2006, councils have been under a duty to carry out their functions with regard to: "...the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons"³ and to take "reasonable steps" to change any policy, procedure or practice that makes it "...unreasonably adverse for disabled persons to experience being subjected to any detriment to which a person is or may be subjected, by the carrying-out of a function by the authority"⁴.

Similar provisions are contained in the Equality Act 2010 that came into force in autumn 2010:

- > Section 15 says that a disabled person is discriminated against if they are treated less favourably because of something arising in consequence of their disability and the public authority cannot show that the treatment is a proportionate way of achieving a legitimate aim.
- > Section 19 provides that indirect discrimination occurs when a policy that applies in the same way for everybody has an effect that particularly disadvantages disabled people.

- > Section 20(3) creates a duty “...where a provision, criterion or practice ...puts a disabled person at a substantial disadvantage ... in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”

Councils must have regard to these duties when collecting and recovering council tax.

Case study – the need for information about the individual

Mrs G suffered from long-term, severe mental illness and was known to, but refused support from, a community mental health team. She became involved in litigation with a bank over a mortgage. The court appointed a member of the community mental health team (and employee of Mrs G’s council) and then, later, the Official Solicitor as Mrs G’s Litigation Friend. Mrs G’s sister wrote to the council’s social services department with concerns about her mental health and financial welfare and asking for co-ordinated action from the council.

In parallel, and separate to Mrs G’s litigation with the bank, the council’s council tax section had been trying to recover some £5,000 of council tax arrears. Numerous attempts to contact Mrs G had failed and, not knowing of her mental illness, the council applied to have Mrs G declared bankrupt and a Trustee in Bankruptcy was appointed.

By then the bank and the Official Solicitor (acting as Mrs G’s Litigation Friend) had reached an agreement to settle the litigation over the mortgage. The bankruptcy meant that the agreement could not be implemented as the Trustee in Bankruptcy controlled Mrs G’s assets. When the Official Solicitor made contact the council tax section became aware of Mrs G’s illness. An officer recorded that if the section had been aware, bankruptcy action would never have been taken.

The council told the Ombudsman that the council tax officer who decided to pursue bankruptcy had checked the council tax and benefit records, correspondence and bailiff’s reports and considered alternative recovery methods. He had not recorded these checks. The council questioned whether it would be reasonable to expect the officer to have conducted an unsolicited check with social services.

The Ombudsman found that the failure to record checks and the reasons for not pursuing alternative recovery methods was maladministration and said:

Part of the council was aware that [Mrs G] had a mental health difficulty and was unable to conduct her own affairs. The failure to make effective internal enquiries led to unwarranted action against a clearly vulnerable lady...If a council chooses to use bankruptcy to collect a local taxation debt it should make all reasonable checks of the information it has to establish that the debtor is not vulnerable. Given the possible consequences of bankruptcy I do not think it unreasonable for Revenue Officers to look beyond their own departmental information and consider a council’s records as a whole...

The equality duty and mental health are particularly relevant to council tax debt recovery because:

1. Mental impairment can be a disability if it has a substantial and long-term adverse effect on someone’s ability to carry out normal day-to-day activities.
2. People suffering from a severe mental impairment can be entitled to a reduction in council tax⁵.

People with mental illness tend to have higher levels of debt than those who are well – 24% of people with depression and anxiety (a common mental disorder) and 33% with psychosis experience higher levels of debt⁶.

The link between debt and mental health is recognised by the private consumer finance industry, the Royal College of Psychiatrists, the Royal College of General Practitioners, the Money Advice Trust, MIND and

other charities. Advice and guidance to the industry, social care and health professionals have been published, including *Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt* published by the Money Advice Liaison Group⁷ that brings these interest groups together.

Powers to gather information about individuals

The Council Tax (Administration and Enforcement) Regulations 1992 govern what information Council Tax billing authorities can seek for the purposes of recovering council tax debts – a billing authority can only ask another authority for information about someone’s name, address, previous addresses and dates when they lived at those addresses, but can use any information that it holds under any of its other powers.

Information about a person’s mental or physical health is sensitive personal data and cannot be disclosed except with their consent or some other, limited, circumstances⁸.

The Information Commissioner has said that he will avoid an over restrictive application of the law where that would lead to organisations failing to make sensible use of the information they hold⁹.

The Information Commissioner has issued guidance that information held by different council departments can be shared between those departments, as long as it is not for a completely separate and unrelated purpose and data protection principles are applied¹⁰. The guidance says that local authorities should be open and transparent about all the probable reasons for which such data may be used.

We take the view that, provided these principles are adhered to, sensitive personal data can be shared within a billing authority, for example a unitary authority that is both the council tax and social services authority.

Avoiding maladministration in council tax recovery

We are likely to find maladministration if a council:

- > **does not have a formal, published Debt Recovery Policy covering bankruptcy, committal to prison or charging orders**
- > **has not gathered and considered information about an individual debtor’s circumstances**
- > **does not include in its Debt Recovery Policy the steps officers must take before deciding on bankruptcy, committal to prison or charging orders, or**
- > **pursues bankruptcy without clearly recording that each of these steps has been taken and making a record of each outcome.**

In developing a Debt Recovery Policy a council must, by law, consider whether its recovery practice would particularly disadvantage a disabled person; and, if so, what steps can be taken to avoid the disadvantage.

We expect Debt Recovery Policies to set out when decisions about recovery measures should be based on consideration of an individual debtor’s circumstances and the information that the decision maker should consider. This will depend on a combination of practicality and the impact of the recovery measure on the debtor – it would not be practicable for a council to consider individual circumstances when issuing reminders or summonses for liability orders (but a council that already has information about individual circumstances that might affect such decisions should ensure that it is taken into account).

Given the draconian consequences for individuals, we are likely to find maladministration if a Debt Recovery Policy does not require:

1. Council officers to have made reasonable efforts to contact the debtor in person, including visiting their home if necessary.
2. A senior officer to have decided that pursuing bankruptcy is a fair and proportionate action after:
 - > reviewing an accurate history of the origin of the debt and attempts to recover it
 - > considering information about the past, present, disputed or outstanding benefit claims or any discounts or exemptions that might be relevant
 - > assessing that the debtor has assets that will clear the debt if bankruptcy is pursued
 - > assessing that there is no realistic prospect of recovering the debt by other means in a reasonable timescale
 - > gathering sufficient evidence about the debtor's circumstances
 - > considering whether a debtor's failure to pay and to respond to other recovery measures could arise from a disability (including a mental impairment with a long-term and substantial effect on normal day-to-day activities), and
 - > considering whether the debtor's personal circumstances warrant them being protected from the consequences of recovery action.

Visits to a debtor's home to levy distress are an opportunity to gather information and a council's expectations about what should be recorded by its own staff or bailiffs should be set out in its Debt Recovery Policy.

Decisions about pursuing bankruptcy, seeking committal to prison or applying for a charging order should be recorded and the records retained¹¹ together with the information considered by the decision maker.

Written information should to be provided to the debtor when bankruptcy proceedings are being considered. That information should:

- > warn the debtor of the serious consequences of bankruptcy and their continued failure to make arrangements to pay the debt, and
- > urge them to seek independent advice and 'sign-post' to local sources of advice.

Further information

Sources of help

There is no statutory guidance to councils about the use of debt recovery measures. In developing debt recovery policies, we commend councils to consider the publications produced by Citizens Advice, MIND, and particularly:

- > *Collection of Council Tax Arrears Good Practice Protocol* agreed between the Local Government Association and Citizens Advice in July 2009, and
- > The Money Advice Liaison Group's (MALG's) *Mental Health Good Practice Awareness Guidelines*⁷ for the industry concerned with consumer credit and debt.

A note on the Ombudsman's jurisdiction

The Local Government Ombudsman cannot investigate the 'commencement or conduct' of proceedings in any court of law but can investigate a councils actions before court proceedings start. In the case of bankruptcy this is when a bankruptcy petition is served.

The Ombudsman should not investigate a complaint if the person affected has or had an alternative remedy by way of proceedings in any court of law unless the Ombudsman is satisfied that it is not reasonable to expect the person affected to use such proceedings. There is a right to apply for an annulment of a bankruptcy order as part of a defence to bankruptcy proceedings. The Ombudsman does not see this as an alternative remedy by way of proceedings in a court of law.

Visit our website at: www.lgo.org.uk

See our fact sheet on complaints about bankruptcy at:
www.lgo.org.uk/publications/fact-sheets/complaints-about-bankruptcy/

If you have a complaint you would like to make about your local council, you can contact us on:
0300 061 0614.

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- 1 Annual Revenue Collection Statistics, Chartered Institute of Public Finance and Accountancy.
 - 2 *The Times* 7 January 2009. Not all these petitions will have been about council tax debt.
 - 3 Section 49A Disability Discrimination Act 1995 introduced by Section 3 of the Disability Discrimination Act 2005.
 - 4 Section 21E Disability Discrimination Act 1995 introduced by Section 2 of the Disability Discrimination Act 2005.
 - 5 Section 11 and Schedule 1 Local Government Finance Act 1992.
 - 6 Jenkins R, Bhugra D, Bebbington P, Brugha T, Farrell M, Coid J, Fryers T, Weich S, Singleton N, Meltzer H (2008). *Debt, income and mental disorder in the general population*. *Psychological Medicine* 38, 1485-1494.
 - 7 www.malg.org.uk
 - 8 Data Protection Act 1998 Section 2.
 - 9 *Sharing Personal Information – Our Approach* Information Commissioner's Office, April 2007.
 - 10 *Data Protection Good Practice Note – Data sharing between different local authority departments* Information Commissioner's Office, June 2008.
 - 11 In accordance with the council's information security and retention policies.

Agenda Item 9

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By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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