

## ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1)	<b>Meeting:</b>	<b>Cabinet</b>
2)	<b>Date:</b>	<b>5<sup>th</sup> June 2013</b>
3)	<b>Title:</b>	<b>Proactive Insolvency for Council Tax and Non Domestic Rates Arrears</b>
4)	<b>Directorate:</b>	<b>Resources</b>

### 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 1<sup>st</sup> 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 1<sup>st</sup> April 2013, the numbers and values involved for those Council Tax Accounts which are generally each increasing by over £1,000 each year.

<b>Account Balance</b>	<b>Number of Accounts</b>	<b>Average Balance</b>	<b>Total Balance</b>
£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
	<b>333</b>	<b>£2,899</b>	<b>£965,520</b>

These habitual non payers are contributing to the growing cumulative arrears - as at 1<sup>st</sup> 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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