

OVERVIEW AND SCRUTINY COMMITTEE
16 JULY 2019

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: FAIR COLLECTION POLICY

REPORT OF: SERVICE DIRECTOR - CUSTOMERS

EXECUTIVE MEMBER: EXECUTIVE MEMBER FOR FINANCE & IT

COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

1.1 To provide the Overview & Scrutiny Committee with an opportunity to review an early draft of the proposed Fair Collection Policy before it is considered by Cabinet.

2. Recommendations

2.1 That the Committee reviews the draft policy.

2.2 That the Committee makes any comments on the draft policy it considers appropriate.

3. REASONS FOR RECOMMENDATIONS

3.1 To allow the Overview & Scrutiny Committee an early opportunity to review the draft policy before it is considered by Cabinet.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 This is an opportunity to consult with the Committee and alternative options can be considered as part of this and any wider consultation.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 The draft policy has been considered by the Executive Member and it is proposed to consult further with Citizens Advice.

5.2 Prior to the change in administration, the then Executive Member for Finance & IT, former Councillor Julian Cunningham arranged a briefing on the Council's collection processes for himself, Councillor Allen and Councillor Collins at which the Council's collection processes, which form the basis of this policy were discussed.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 13 June 2019.

7. BACKGROUND

- 7.1 At the Council Meeting on 17 January 2019, the following motion was put before the Council:

At a time of increasing debt, homelessness, poverty, hardship and uncertainty caused by the rollout of Universal Credit in North Hertfordshire, this Council resolves:

'To implement an ethical debt collection policy and align itself to best practice in both the private sector and other local authorities, which have abandoned the use of bailiffs for debt collection.

To ensure that value for money for council tax payers is maximised by pursuing debt repayment plans that will enable money to be paid back to the local authority through managed debt collection.

To avoid additional costs being incurred such as those arising from needing to re-house people made homeless as a result of a non-ethical debt collection policy.

To enshrine the above in contracts held with agencies operating on behalf of North Herts District Council and to work with them to implement an ethical debt collection policy.

This Council additionally notes that an ethical debt collection policy is not a 'no debt' collection policy and that everyone who owes money to the local authority is obliged to repay it.'

- 7.2 The motion was lost, however it has highlighted the need to adopt a formal policy to document the collection processes, which have been used by the Council for many years and which have proved to be effective and fair.

8. RELEVANT CONSIDERATIONS

- 8.1 The draft policy is available at Appendix 1.
- 8.2 The Council already complies with all of the sentiments expressed in the above motion with the exception of "abandoning the use of Bailiffs".
- 8.3 The age old perception of Collection Agents bashing down doors, forcibly entering premises, seizing goods and charging excessive fees could not thankfully, be further from the truth today. The industry is highly regulated and this Council insists that all Collection Agents carrying out work for it must be certificated by the County Court. All fees are also regulated and subject to legislation.
- 8.4 In the five-year period 1 January 2014 to 31 December 2018, there were only 36 complaints nationally made about the actions of Collection Agents to the Local Government Ombudsman and it is many years since this Council has had a justified complaint about the conduct of a Collection Agent.

- 8.5 The application of this policy is dependent on an effective working relationship between the Council, the Council's Collection Agents and Citizens Advice. This tripartite relationship has been developed over many years and now incorporates the following:
- The use of the Collection Agents as the "eyes and ears" on the ground. The Collection Agents are often the first to identify potential vulnerable cases and these are referred to either the Council or Citizens Advice for further help and assistance. No enforcement action is taken in these cases and any enforcement fees are withdrawn
 - Regular meetings between the Council, Collection Agents and Citizens Advice at which the Collection Agents update on any changes to legislation and practices and review any difficult or unusual cases
 - Provision of training by the Collection Agents for Citizens Advice staff
 - Collection Agents attendance at the Council's Safeguarding Training and refresher training
- 8.6 One of the main threads of the policy is around dealing with vulnerable customers. There is no definition of vulnerable within the relevant legislation, which is the Taking Control of Goods Regulations 2013. At 5.3 of the policy we identify potential vulnerable situations and point out that the list is not exhaustive. It also makes the point that not all cases falling into one of the categories will be vulnerable and each case has to be decided on its own merits. The test is whether "*Continued enforcement action would have a severely detrimental effect on the welfare of the customer or anyone else residing in the property*"
- 8.7 Our primary Collection Agents, Penham Excel Ltd has produced an information leaflet, which is provided with their first letter. This has been used on a trial basis in some areas and is about to be introduced in North Hertfordshire. It also has a published Vulnerability Policy and these are available as Appendices 2 and 3.
- 8.8 Penham Excel Ltd has also provided an information note for the Council detailing its approach to collection, which is at Appendix 4.
- 8.9 It can be seen from the above that abandoning the use of Collection Agents would actually have a detrimental effect on the Council's ability to identify potentially vulnerable cases as in most instances it is the Collection Agents on the ground that are best placed to make that judgement.
- 8.10 It is also important that the Council has sufficient options available to enforce collection against those who have the ability to pay and choose not to.
- 8.11 The Council's primary aim is to make a payment arrangement rather than take any enforcement action and customers are encouraged at all stages, including when visited by the Collection Agents to make such an arrangement.
- 8.12 Before any goods can be seized by the Collection Agents, consent is required from the Council and there have been no such cases for several years.
- 8.13 Before any cases are referred to a Collection Agent, checks are made to see if more appropriate methods of recovery are available, primarily these would be Attachment of Benefits, Attachment of Earnings or by adding the amount to an existing in-house arrangement..

- 8.14 If, in the course of making enquiries, a Collection Agent becomes aware that a customer is in receipt of an attachable welfare benefit, the case will be referred back to the Council and any fees will be withdrawn. Equally, where a Collection Agent believes a customer to be in hardship, they will recommend to the Council that a Discretionary Council Tax Payment is awarded.
- 8.15 It therefore follows that collection from customers in receipt of Universal Credit will be by personal arrangement with the Council or Attachment from Universal Credit.
- 8.16 Table 1 below shows the amount of Council Tax debt at March 2019 being collected by both the Council and the Collection Agents including the amounts that are subject in both cases to payment arrangements. This shows the Council's and the Collection Agent's commitment to enter into payment arrangements rather than using other forms of enforcement.

Table 1:

Current Debts at NHDC on Payment Arrangements	,000
Value of cases on arrangement	£825
Value of cases on hold	£139
Value of cases on an Attachment of Welfare Benefit	£170
Value of cases awaiting an Attachment of Welfare Benefits	£435
Value of cases on Attachment of Earnings	£88
Value of cases awaiting an Attachment of Earnings	£227
Total value of cases on payment arrangements in house	£1,884
Total value of cases on payment arrangements with Collection Agents	£478
Total Value on payment arrangements	£2,362

- 8.17 If it has not been possible for the Council or its Collection Agent to secure a payment arrangement, and there is no evidence that the customer should be considered as vulnerable or does not have the ability to pay, other options will be considered to collect the outstanding amount. These are:

Bankruptcy & Charging Orders

The Council in consultation with its specialist solicitors will consider whether either of these options is viable. If there is no equity in the asset neither option is viable as there will be no assets to cover the debt. In practice, these remedies are rarely carried through to a conclusion.

Winding Up Orders

These apply to Business Rates collection only and follow the same considerations as Bankruptcy and Charging Orders. It has never been necessary to date to follow this through to a conclusion.

Means Enquiry

This is considered when all other options have been exhausted and there is no evidence available that the customer does not have the means to pay. The Magistrates will carry out an enquiry into the customer's ability to pay. In the vast majority of cases, the Magistrates will make a payment order attached to a suspended prison sentence. The Magistrates also have the option to remit the debt if they are satisfied that the customer has no means to pay or can in extreme circumstances order commitment to prison for up to 90 days.

This remedy is used carefully and there has only been one instance where a customer has been committed to prison and this was an extreme case where the customer absconded and had to be arrested in the north of England.

- 8.18 At all the above stages the Council will accept a payment arrangement and suspend the action. Instigating these remedies will often result in the customer making their first contact with the Council or Citizens Advice and in many cases results in the Council establishing vulnerable cases.
- 8.19 By far the vast majority of customers in North Hertfordshire pay on time and collection rates for both Council Tax and Business Rates have maintained a high level despite the years of austerity and other changes such as the implementation of the Council Tax Reduction Scheme. Table 2 shows the comparative collection rates for the previous seven financial years, i.e. the year prior to the Introduction of CTRS and the six full subsequent years.

Table 2:

Year	Council Tax		Business Rates	
	In-Year	As at 31/05/19	In-Year	As at 31/05/19
2018/2019	98.38%	98.69%	98.31%	98.53%
2017/2018	98.22%	99.27%	98.38%	99.37%
2016/2017	98.40%	99.56%	98.55%	99.79%
2015/2016	98.13%	99.69%	97.99%	99.72%
2014/2015	97.84%	99.79%	96.94%	99.75%
2013/2014	97.81%	99.83%	97.39%	99.91%
2012/2013	98.18%	99.94%	97.06%	99.90%

- 8.20 By the time that this meeting takes place, the Council will have entered into a pilot scheme with HMRC to identify potential Council Tax cases for Attachment of Earnings. This will increase the Council's ability to attach earnings rather than send cases for enforcement action.
- 8.21 For Council Tax, Business Rates and BID Levy, the approach taken by the Council does ultimately result in high collection rates with over 99.5% net of write-offs eventually collected for each year, although not necessarily collected within the year.
- 8.22 This Council does use write-offs sparingly and is most often used in cases where customers have absconded, been made bankrupt or where the debt is too old to collect. Write-offs will be more prevalent for older debts, where all other efforts to collect have been unsuccessful.

- 8.23 In 2018/2019 a total of £504K Council Tax was written-off across all years and only £49K (0.57% of the total collectable debit for the year) of that related to 2018/2019. Of that £504K, £181K related to cases that had absconded, £99K to bankruptcies and £140K where the debt was now too old to collect.

9. LEGAL IMPLICATIONS

- 9.1 Section 6.1.1 of the Council's Constitution states:

The Council is required by Law to discharge certain overview and scrutiny functions. These functions are an essential component of local democracy. A Scrutiny Committee can contribute to the development of Council policies and also hold the Cabinet to account for its decisions. Another key part of the overview and scrutiny role is to review existing policies, consider proposals for new policies and suggest new policies.

- 9.2 The purpose of this report is to give the Committee the opportunity to consider the new policy and comment on the draft.

- 9.3 There is a considerable amount of legislation governing the administration and collection of amounts owed to the Council. The principal legislation is:

- Local Government Finance Acts 1989 and 1992
- Council Tax (Administration & Enforcement) Regulations 1992, as amended
- Non Domestic Rate (Collection & Enforcement) Regulations 1989, as amended
- The Taking Control of Goods Regulations 2013 & Taking Control of Goods (Fees) Regulations 2014
- Various County and Magistrates Court Rules

10. FINANCIAL IMPLICATIONS

- 10.1 The Council has a statutory requirement to collect local taxes such as Council Tax and Business Rates and also has a responsibility towards its fiduciary requirement to collect amounts of money owed to it.

- 10.2 Whilst it is correct to provide as much assistance as possible to those who are vulnerable and/or struggling to meet their financial commitments, the Council also has a duty to safeguard the interests of the vast majority of customers who do pay on time and in full. This is because any shortfall in money collected for whatever service will either result in those that do pay having to pay more or the Council having to reduce the services that it provides.

- 10.3 The intention of this policy is to achieve the maximum collection from those finding it difficult to pay, even if that takes a little longer, rather than offering no assistance and no money being collected. For that reason, Officers would recommend that the correct balance is being struck.

- 10.4 Having said that, there has to be a realistic approach taken towards debts due to the Council where there is little prospect of collection, either because of hardship or because of the age of the debt.

- 10.5 Section 7 of the Policy deals with the viability of collection and will cover circumstances in which it is considered difficult to collect debts. This has been an area where the Council can be more proactive and be more prepared to write-off difficult to collect debts.
- 10.6 One such circumstance is where Liability Orders from multiple years are left Pending Attachment of Benefits, as only one Liability Order at a time can be attached. In some circumstances, this results in Liability Orders from multiple years being left to “queue up” with little prospect of the amounts due ever being collected. An indication of this is that when a snap shot was taken in March 2019, there was a total of £170K being collected by AOB and £435K waiting to be attached. It is therefore proposed to only have Liability Orders for the current year and the three previous years left Pending Attachment of Benefits.
- 10.7 Further work is required to identify other circumstances where collection is difficult and this will be subject to further discussions with the Executive Member for Finance & IT and the Service Director – Resources, before being included in the final policy to be considered by Cabinet in September.
- 10.8 The Council does not make any payments to its Collection Agents.

11. RISK IMPLICATIONS

- 11.1 The processes which the Council has used for many years and which are consolidated in this policy have ensured that the Council goes about collecting money owed to it in a fair and responsible way, which ensures that ultimately collection rates are high.
- 11.2 Losing the option to use Collection Agents would establish a high risk that those collection rates would be compromised and would lose a major ability to establish households in genuine need being identified.
- 11.3 Existing legislation allows for the Council to apply to the Magistrates Court for a Means Enquiry where there is ability to pay but the customer wilfully refuses or shows culpable neglect.
- 11.4 This is a last resort and likely to be less frequent if the HMRC Pilot is found to be a success. This option is not available under the existing legislation if the case has not already been referred to a Collection Agent.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The policy intention is to make it as easy as possible for customers to pay any money owed to the Council by providing good advice and assistance where appropriate. This approach will maximise collection even if it will in some cases take a little longer. This will ensure that the interests of those who do pay on time and in full will be better safeguarded than adopting an approach where no assistance is provided and attempts at collection fail.

12.3 An Equalities Impact Assessment is available at Appendix 5.

13. SOCIAL VALUE IMPLICATIONS

13.1 The Social Value Act and “go local” policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

14.1 There are no Human Resources implications to this report.

15. APPENDICES

15.1 Appendix 1 – Draft Fair Collection Policy

15.2 Appendix 2 – Penham Excel Ltd Information Leaflet

15.3 Appendix 3 – Penham Excel Ltd Vulnerability Policy

15.4 Appendix 4 – Penham Excel Ltd Information Note for Councils

15.5 Appendix 5 - Equalities Impact Assessment

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17. BACKGROUND PAPERS

17.1 None