

**THIS REPORT IS DUE TO BE CONSIDERED BY CABINET
ON 28 JANUARY 2020**

PUBLIC DOCUMENT

TITLE OF REPORT: FAIR COLLECTION POLICY

REPORT OF: SERVICE DIRECTOR - CUSTOMERS

EXECUTIVE MEMBER: COUNCILLOR IAN ALBERT

CURRENT COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

NEW COUNCIL PRIORITY: BUILD THRIVING AND RESILIENT COMMUNITIES

1. EXECUTIVE SUMMARY

1.1 To seek Cabinet approval for the adoption of a Fair Collection Policy supported by adoption of the Council Tax Protocol and use of the Standard Financial Statement.

2. RECOMMENDATIONS

2.1 That Cabinet adopts the Fair Collection Policy at Appendix 1

2.2 That Cabinet approves adoption of the Council Tax Protocol

2.3 That Cabinet notes that the Council now uses the Standard Financial Statement developed by the Money & Pension Service

3. REASONS FOR RECOMMENDATIONS

3.1 To incorporate existing practices used for the collection of money owed to the Council into an overarching policy.

3.2 To confirm the Council's practices and procedures especially those relating to potentially vulnerable customers.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1. The Council has been developing its practices and procedures in this field for many years without codifying them into a single policy document. This is a means of achieving that objective. The alternative would be not to do so.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The draft policy has been subject to consultation with the local branch of Citizens Advice, the Citizens Advice National Office and the Money Advice Trust. The Executive and Deputy Executive Members for Finance and IT have also been consulted.
- 5.2 Comments made by the consultees have been incorporated into the policy and have led to the proposals to adopt the Council Tax Protocol (Appendix 6), (which both of the Council's Collection Agents and the local Citizens Advice have also agreed to adopt) and the Standard Financial Statement (Appendix 8), which are part of the Money Advice Trust's Six Steps referred to as "Stop the Knock". Details of this can be found at Appendix 2

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key Executive 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 than 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 six-year period 1 January 2014 to 30 November 2019, there were only 57 complaints nationally where the Local Government Ombudsman found Collection Agents to be at fault. 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 other than the compliance fee, which they are able to retain under the Taking Control of Goods Regulations 2013. In cases of severe vulnerability, where there is clearly no ability to pay and the case is returned to the Council, the Collection Agents will waive all fees.
 - 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 5.2 and 5.3 of the policy we identify potential vulnerable situations and point out that the list is not exhaustive. At 5.5 the policy 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. We have used the Financial Conduct Authority’s definition of vulnerability in the policy, *“someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care”*.

- 8.7 The practices and procedures that have been developed with the Council's Collection Agents over many years are based on them definitely acting with appropriate levels of care.
- 8.8 Our primary Collection Agents, Penham Excel Ltd has produced an information leaflet, which is provided with their first letter. It also has a published Vulnerability Policy and these are available as Appendices 3 and 4.
- 8.9 Penham Excel Ltd has also provided an information note for the Council detailing its approach to collection, which is at Appendix 5.
- 8.10 When all avenues have been exhausted without success by Penham Excel Ltd, the Council can re-refer a debt to its second Collection Agent, Whyte & Co for that company to have a second chance of collecting the debt using a "fresh pair of eyes". Both companies follow the same Service Level Agreement with the Council, use very similar documentation and adopt the same attitude towards collection.
- 8.11 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 many instances it is the Collection Agents on the ground that make the first contact with the customer and are therefore best placed to identify potential vulnerability.
- 8.12 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.
- 8.13 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.
- 8.14 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.
- 8.15 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..
- 8.16 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.
- 8.17 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.

- 8.18 Table 1 below shows the amount of Council Tax debt at November 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 inc. Court arrangements	£947
Value of cases on hold	£277
Value of cases on an Attachment of Welfare Benefit inc. UC	£168
Value of cases awaiting an Attachment of Welfare Benefits	£475
Value of cases on Attachment of Earnings inc. HMRC Pilot	£90
Value of cases awaiting an Attachment of Earnings	£244
Total value of cases on or awaiting payment arrangements in house	£2,201
Total value of cases on payment arrangements with Collection Agents	£660
Total Value on or awaiting payment arrangements	£2,861

- 8.19 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.

- 8.20 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.
- 8.21 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 31/12/19	In-Year	As at 31/12/19
2018/2019	98.38%	99.35%	98.31%	99.06%
2017/2018	98.22%	99.46%	98.38%	99.73%
2016/2017	98.40%	99.67%	98.55%	99.78%
2015/2016	98.13%	99.80%	97.99%	99.72%
2014/2015	97.84%	99.89%	96.94%	99.79%
2013/2014	97.81%	99.93%	97.39%	99.93%
2012/2013	98.18%	100.00%	97.06%	99.93%

- 8.22 The Council has 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.
- 8.23 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.

- 8.24 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.
- 8.25 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.

Responses to Consultation

- 8.26 Both the local and national Citizens Advice were complimentary about the Council's draft policy and its approach to fair collection. A firm recommendation was that we are clearer on the amounts that can be deducted through Attachment of Earnings. This is laid down in statute and consists of three tables that can be amended from year to year. This has been referenced in the policy at 3.1 with a link to the web site, where the tables can be found. The local Citizens Advice confirmed the close working relationship that exists between them, the Council and the Council's Collection Agents.
- 8.27 The Money Advice Trust was also complimentary about the draft policy and referred the Council to its policy document called "Stop the Knock", which lays down six steps aimed at Councils adopting good practice in debt recovery. The six steps can be found at Appendix 2.
- 8.28 The Council already complies with steps 1,3,4 and 5.
- 8.29 In terms of step 2, this is being addressed with reviews being carried out on the information provided on the Council's web site and on any leaflets provided by the Council and its Collection Agents. It is expected that by the time Cabinet considers this report, the Council will be compliant with step 2.
- 8.30 Step 6 relates to the adoption of the Council Tax Protocol, which is a document developed jointly by Citizens Advice and the Local Government Association. The Council largely complies with this document and will need to review some elements of it, particularly around documentation to ensure compliance. This involves some amendments to the Council Tax bills and this will be done as part of the annual billing process.
- 8.31 The Money Advice Trust also recommended that staff should receive training on vulnerability to ensure a consistent approach to this. This is covered in Section 8 of the Policy.
- 8.32 The Money Advice Trust was particularly complimentary on the following:
- That in 2018/2019 there was a 29% reduction in referrals by the Council to Collection Agents compared with the previous two years
 - The use of SMS and/or email to engage customers before the issue of Reminder Notices and Summonses

- The list of potentially vulnerable customers in the policy with the suggestion that those who do not have English as a first language should also be included. This has now been added.

8.33 Both Citizens Advice and the Money Advice Trust accept that there is a role for Collection Agents where used appropriately and that this is the case at North Herts. This is the case where they are the eyes and ears on the ground to recognise potential cases of vulnerability and to deal with those who can pay but choose not to.

9. LEGAL IMPLICATIONS

9.1 Section 5.6.1 of the Council's Constitution states:

To prepare and agree to implement policies and strategies other than those reserved to Council.

9.2 The purpose of this report is to give Cabinet the opportunity to adopt a Fair Collection Policy.

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 could result in a deficit in the Collection Fund and 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. This is highlighted by the figures in Table 1 at 8.18 above, where it shows that £168K is being collected from Attachment of Benefits, with a further £475K 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 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 The establishment of a Fair Collection Policy will ensure transparency and consistency in recovery processes, reducing reputational risk.
- 11.3 Losing the option to use Collection Agents would establish a high risk that those collection rates would be compromised, especially in relation to those who can pay and choose not to and would lose a major ability to establish households in genuine need being identified.
- 11.4 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.
- 11.5 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 7.

13. SOCIAL VALUE IMPLICATIONS

13.1. The Social Value Act and “go local” requirements 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 – Fair Collection Policy

15.2 Appendix 2 – Stop the Knock

15.3 Appendix 3 – Penham Excel Ltd Information Leaflet

15.4 Appendix 4 – Penham Excel Ltd Vulnerability Policy

15.5 Appendix 5 – Penham Excel Ltd Information Note for Councils

15.6 Appendix 6 – Council Tax Protocol

15.7 Appendix 7 - Equalities Impact Assessment

15.8 Appendix 8 – Standard Financial Statement

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17. BACKGROUND PAPERS

17.1. None