

ARP Debt Management, Recovery and Write-Off Policy

CONTENTS

	<u>Page</u>
1. Introduction and Aims	2
2. Billing and Invoicing arrangements.	4
3. Payment of Bills and Invoices	4
4. Enforcement.	5
5. Extenuating Circumstances	6
6. Potential Enforcement Action	7
7. Debt Advice	8
8. Priority of Debts	9
9. Bad Debts	9
10. Complaints and Errors	12

1. Introduction

- 1.1 Effective debt management is crucial to the success of any organisation. In the current economic climate it is essential that the Council has clear policies and procedures to manage the recovery of debt. If the Council is to achieve our aim of effective income management, then we must seek to recover all debts due, and sustain collection rates. On occasions, however, it becomes necessary to write off debt that cannot be effectively recovered. This policy sets the framework for officers employed by Breckland Council, or other officers working on behalf of the Council through Anglia Revenues Partnership to manage debt in an efficient and effective manner and administer the write-off of debts.
- 1.2 The policy also applies to Enforcement Agents who are sometimes employed by the Council to carry out recovery of assets on our behalf.
- 1.3 This policy has therefore been designed to address these concerns and set a framework for officers to administer the write off of debts. This is a technical document, designed for officers involved with the administration of revenues and benefits for the Council. More general information on revenues and benefits is available at www.angliarevenues.gov.uk
- 1.4 The key aims of this policy are as follows:
- to ensure that debts are managed in accordance with legislative provisions and good practice;
 - to maximise income collected by the council;
 - to ensure a professional, consistent, cost effective and timely approach to recovery action across all of the councils' services; and
 - customers' circumstances and ability to pay are fully taken into account so as to distinguish between the customer who won't pay and the customer who genuinely can't pay.
 - to minimise debts outstanding at the end of the financial year, and therefore the need for bad debt provisions, and actual debt write offs.
- 1.5 In order to achieve these aims, we will:
- work with clients to clear debts as soon as possible including working with approved advice agencies
 - consider fully debtors' circumstances in light of their ability to pay, so as to distinguish from the outset between the debtor who won't pay and the debtor who genuinely can't pay
 - promote a co-ordinated approach across Council departments, for example through sharing information and managing multiple debts
 - focus resources on collectable debt
 - take all reasonable steps to recover debt, but clear debt where no further recovery action is possible
 - treat individuals consistently and fairly regardless of age, gender, ethnicity, disability and sexual orientation and to ensure that individuals' rights under Data Protection and Human Rights legislation are protected.
- 1.6 Legal Framework for Recovery is set out in council tax, housing and business rate legislation. Where new legislation is introduced, this policy will be reviewed to ensure compliance.

2. Billing and Invoicing Arrangements

- 2.1 The Council is committed to achieving the most efficient and effective payment methods, both for payments received, and payments made.
- 2.2 We will encourage and promote the use of Direct Debit, BACS transfer and other electronic systems, as the most efficient and secure options, and also to protect those involved in the handling of cash against the risk of crime.
- 2.3 Although electronic media forms the basis of the Councils' preferred payment methods, the widest possible range of alternatives will be offered, subject to the existence of sufficient demand and an appropriate balance of resource required to support any particular payment method.
- 2.4 Delay in sending bills, accounts or invoices can inadvertently create debt problems from the outset. Debt will accumulate and if the debtor is unable to pay, that will create pressure for the household or business concerned. Service standards are used to ensure that information received is assessed and processed as quickly and efficiently as possible.
- 2.5 Bills, accounts, invoices and all similar documents will be issued promptly in accordance with the Council's service standards. Upon issue these documents will:
 - Be accurate.
 - State clearly what payments are required.
 - State clearly when payment should be made.
 - List the options for payment
 - List the locations where payments can be made
 - Include, where appropriate, a statement advising those having difficulty making payment to contact the Councils.
 - Include, where appropriate, the consequences of payment being late or not made.
 - Include a contact point where advice can be obtained or a query resolved.

3 Payment of Bills and Invoices

- 3.1 Delays in payment or inability to pay are not always a reflection on the individual or business concerned. On occasions the problem may arise where monies due to that individual or business have not been received or paid on time which, in turn, has led to outgoing payments being late or falling behind.
- 3.2 The Council recognises that they have a role to play in this process. Bills, invoices and charges for which the Council is responsible will be paid promptly. Monies due for return to individuals or businesses will be processed promptly and refunded without any unnecessary delay.
- 3.3 Payments made to a third party such as Housing Benefit payments made directly to a landlord at a tenant's request will be made regularly and on time.

4. Enforcement

4.1 It is inevitable that for a variety of reasons some money due to the Council will not be paid as requested.

4.2 In all cases the Council will follow the relevant statutory or civil process to enforce payment. Those processes will constitute the basic standard of service, the individual or organisation can expect to receive. Extenuating circumstances, as defined below may warrant deviations from that principle.

4.3 In general terms enforcement of an unpaid debt will commence with a reminder. Reminders and Final Notices will not be issued for amounts below these limits:

	Reminder	Final Notice
Council Tax	£5	£15
Business rates (non-domestic rates)	£10	£10

4.4 Reminders will:

- Be accurate
- Be issued promptly
- Comply with any legislative requirements.
- State clearly the amount outstanding.
- State clearly when payment should be made
- List the options for payment.
- List the locations where payment can be made.
- Include a contact point for any query or issue arising from the reminder
- Request that the recipient make contact immediately if payment cannot be made or will be delayed.
- Include, where appropriate, the consequences of payment being further delayed or not made.
- Include information on the availability of independent debt advice

4.5 If reminders do not prompt payment a summons will be issued. Summonses will not be issued for less than the costs which would be incurred.

4.6 As the enforcement process progresses, cases of payment difficulty will be revealed. Where appropriate, debt advice or counselling will be signposted – as set out in section 7 of this policy. Those cases will be approached positively and constructively, to achieve a manageable and effective solution. In reaching a decision the Council will work to the following principles.

- The enforcement process comprises a number of stages, which increase in severity in order to focus the debtor on making payment. When contact is made with the Council to resolve a payment difficulty, the enforcement process will be held at that point subject to a satisfactory agreement for payment. This will reward early contact.
- Voluntary solutions will always be considered in preference to statutory or civil remedies.
- Past history of payment will be a factor in any decision.

- Extenuating or household circumstances will be taken into account in any decision.
- Where payment solutions are agreed, confirmation of the agreement will be made in writing and include the action that may be taken in the event of non-payment.
- Where a payment solution cannot be agreed, the debtor will be advised of the reason for that outcome.

4.7 Progression of the enforcement process is a factor in assessing the potential success of a payment solution. As early contact is effectively rewarded by a more relaxed approach, solutions achieved later in the process will attract a significantly higher level of security and payment monitoring arrangements in order to protect the Councils' interests.

4.8 Recovery of debt will as far as possible be co-ordinated to avoid unreasonable or excessive pressure being placed upon an individual and to maximise the income from that individual. A more positive outcome can be achieved, by combining all debts, and agreeing a realistic payment schedule as opposed to leaving the individual to face and manage a number of competing pressures from the same organisation.

4.9 However, it should be recognised that this solution will only work with the positive engagement and commitment of the individual or household concerned. Every effort will be made to ensure that they have adequate advice and support in that process. In the event that an arrangement fails or the level of debt is not as a minimum being contained, the Council will have no alternative but to follow through with whatever action is necessary to recover the debt.

5. **Extenuating Circumstances**

5.1 There will be occasions where the Council must look beyond the debt itself and take account of the potential impact upon the individual, family, household or business concerned, either to protect vulnerable people, to avoid the transfer of a problem elsewhere or where there may be some impact upon the local community.

5.2 Examples of this are: -

- Vulnerable person in household (see below)
- Potential homelessness.
- The ability of the individual, household or business to make payment.

5.3 Additional factors may apply for business debts. Examples of this are: -

- Potential loss of employment for employees of the business
- Loss of key facilities for the local community
- A payment option is the only choice because the business has no assets
- Negative impact on the local community if the business was forced to close

The list is not exhaustive. It is simply intended to reflect the type of issue that the Councils may react to when recovering or enforcing debts.

5.4 Some groups of people are particularly vulnerable and may have difficulties making payment. A person may be considered vulnerable in the following circumstances. The list is not exhaustive and each case will be determined on its own merits:-

- The person is elderly or frail
- Women in the latter stages of pregnancy
- The person is seriously ill or mentally or physically disabled
- The person has communication or learning difficulties
- The person has young children and there is severe deprivation
- The person has recently been bereaved or made unemployed
- The person has difficulty in understanding written or spoken English

5.5 Falling into one of these categories does not automatically mean that recovery action is not appropriate. The Council will make individual decisions based upon the individual circumstances of the debtor to identify if recovery action is appropriate and, if so, what action to take.

5.6 A case of vulnerability may not be identified until it has been passed to our Enforcement Agents. As part of their certification process they will be specifically trained on cases of vulnerability and will work to strict guidance to decide the best way forward.

5.7 Officers making decisions on the recovery of debt will ensure that consideration has been given to issues of this nature and that any action taken is proportionate to the situation. We will consider extended payment arrangements and ensure that cases are not passed for further action where this is not appropriate.

5.8 Where decisions are made, the reasons will be documented and the individual or business concerned will be made aware of those reasons.

6. **Potential Enforcement Action**

6.1 The Council will use all means at our disposal to ensure that all monies due to the authority are recovered. In doing so we will consider any option to achieve that goal.

6.2 However, within that process there will be a core of regular, routine actions or remedies, which are used to secure payment.

6.3 **Attachment of Earnings or Allowances:** Will be used where a voluntary arrangement has failed, or previous payment history indicates a voluntary arrangement will create unnecessary administrative overheads or is unlikely to be successful.

6.4 The law allows different attachments to run concurrently. Officers will use their discretion if that situation occurs to ensure that hardship is not inadvertently created.

6.5 **Attachment/Deductions from Benefit:** Will be used routinely to secure payment. Regulations control the way in which this remedy is applied. Consequently, the Council has little or no discretion.

- 6.6 **Taking Control of Goods:** Will be used to secure payment where other more routine options are not available. Cases will be passed to the Enforcement Agency Team who will issue up to three letters and attempt to contact the debtor by telephone to agree a payment arrangement (compliance stage). At this stage statutory fees will be added to the debt.
- 6.7 If the compliance stage fails an Enforcement Agent, certified by the Court and who will adhere to a code of conduct, will attend the debtors' premises with a view to obtaining payment or removing goods (taking control of goods) to satisfy the debt. Actual taking control of goods will, however, only be undertaken where sufficient goods, stock or possessions are available to recover the cost of the process and either a full or significant partial settlement of the debt involved. Further statutory fees will be added to the debt at this stage.
- 6.8 **Bankruptcy proceedings:** Will be used as a last resort and only where sufficient equity is believed to exist to support a full or partial settlement of monies outstanding. In doing so however the Council recognises that there may well be situations where it is in the interest of the individual to take that option as a solution to their overall situation.
- 6.9 **Charging Orders:** Will be used where the individual or business concerned cannot make payment and an equitable solution is to allow or enable payment of the debt from the equity within a property at a later date.
- 6.10 Whenever a charging order is in place the debtor will be encouraged keep up to date on future bills.
- 6.11 There will be occasions where it would be appropriate to apply for a Charging Order with forced sale to realise payment of the debt immediately. It will be unlikely that a sale order will be granted if the house is occupied by a family and therefore this action will be targeted on empty homes or those occupied by a single adult. We may also try those that are currently rented, though this will have a degree of risk.
- 6.12 **Committal Proceedings:** Will be used to recover Council Tax and Business Rates where there is no evidence of hardship or extenuating circumstances and other actions are not appropriate.
- 6.13 The role of the Magistrates Court in committal proceedings is to close the enforcement process. In this context they have considerable discretion, ranging from the imposition of a prison sentence through to the ability to remit all or part of the debt in question. These proceedings will only be used where there is a good prospect of recovering the debt.
- 6.14 **County Court Order:** Will be sought as necessary to support the recovery process, including use of the County Court bailiff
- 6.15 **Liquidation:** Applies to companies and normally will only be used where sufficient funds to clear any debt either partially or in full, will be created from the outcome. However there may be occasions where a company is using the law to avoid payment. In that case the Council will take action to force a liquidation of the company.

6.16 **Third Party Debt Order:** Used to secure payment of a debt by freezing and seizing (attaching) money owed or payable by a third party to the debtor. Available through the County Court.

7. **Debt Advice**

7.1 In the process of achieving payment solutions, debtors may look to the Council to provide or signpost debt advice or even full debt counselling.

7.2 In this context staff involved in negotiations with debtors will ensure that: -

- Any benefits or entitlements, over which the Council has direct control, are made available or taken up.
- Information required to assess the financial position is captured in a standard format suitable for use by complementary organisations. A copy of that information will be given to the debtor should additional or independent advice and assistance need to be sought elsewhere.
- Debtors are directed to other agencies or organisations that offer support or assistance suitable to their needs.
- Debtors are alerted to the availability of other benefits generally which may alleviate their situation.
- Debtors are aware of both their rights and responsibilities and the consequences of not meeting the required level of payment.

7.3 It is important to recognise however that in this situation the Council may face possible conflict of interests. While advice given will be as impartial as possible, the Council cannot offer advice which may prejudice recovery of its own debts. If that situation arises the debtor will be advised to take independent advice such as from Citizens Advice or a registered debt practitioner.

7.4 The Council will take account of that independent involvement in its decisions on recovering amounts due. In most cases this will result in protection from further action while any recovery plan agreed is progressed.

8. **Priority of Debts**

8.1 In order to manage debt effectively, it may be necessary to prioritise debts. The Council will attach the following level of importance and priority when reaching agreements to pay outstanding debts.

- Payments necessary to retain occupation of a person's home.
- Statutory payments.
- Payments in respect of a non-statutory current debt.
- Payments in respect of a previous, non-recurring debt.

It should be noted that although this priority is intended to guide action on Council related debts, it will also give guidance, when extenuating circumstances are being considered.

8.2 It is also necessary to consider the order in which payments will be allocated.

8.3 Payment arrangements must meet ongoing liability, plus an additional amount towards any arrears. However there may be exceptional circumstances where

ongoing liability only may be appropriate. Any arrears or retrospective debt being classified as bad debt until there is an improvement in the overall situation.

8.4 Payments in respect of arrears will be allocated on an oldest debt first basis, unless specified otherwise by the individual or business concerned.

9. **Bad Debts**

9.1 The Council, like any organisation whose business involves the recovery of monies due, will inevitably encounter "bad debts". The policy of the Council is to minimise the incidence and impact of bad debt and we will use all means at our disposal to achieve this objective. *In all cases, bad debt decisions are based upon the total outstanding, not any part, unless part of the debt can legitimately be isolated for specific action.*

9.2 For the purposes of this policy a "bad debt" is classified as:-

Money due when there is little or no likelihood of recovery.

Examples of this are: -

- The debtor has absconded and current address is unknown
- The debtor resides outside the UK and is unlikely to return.
- The debtor has been declared bankrupt or obtained a debt relief order and the debt in question forms part of those proceedings
- A company has ceased trading, or is being liquidated and has no assets.
- The debtor has died and there is insufficient equity in the estate to cover the debt.

Money due where it is uneconomic or inefficient to recover the sum involved.

Examples of this are: -

- A small balance outstanding. The Council does not issue reminders and final notices for small balances (as detailed above). Summonses are not issued for less than the costs which would be incurred.
- A balance outstanding where the expenses of recovery in terms of fees, staff time and other charges, balanced against the likelihood of recovery (including all additional expenses and charges) outweigh the prospect of full or partial payment.
- Where enforcement of the debt involves an arguable point of law and for that reason enforcement action could fail, with the imposition of costs or charges upon the Councils.

Money due where the Councils do not wish to pursue recovery because the circumstances of a case would attract well-founded adverse publicity or public reaction, or the concept of natural justice would be compromised.

Examples of this are: -

- A long period of time before the debt was brought to the notice of the individual concerned.
- Incorrect information or advice being given by a person within the organisation
- The individual being entitled to help or assistance with the debt, which are no longer available, but which would have cancelled or reduced the debt had they been granted or applied for at the time the debt occurred or was created.

It should, however, be noted that the examples listed are not exhaustive, and are not absolute or definitive classifications.

All decisions on individual debts are decided on the circumstances that exist, at the time.

There will be occasions when what would otherwise be a “bad debt” will be subject to recovery action.

For example:-

- Although a small balance is outstanding it has arisen because of a personal protest, or to initiate or support a protest campaign.
- The individual concerned has made a complaint, which has been held to be unfounded.
- An issue of principle is involved. If all debtors in this situation took similar action, the cumulative effect would be a large sum of money.

9.3 The Council will make suitable and adequate provision for the incidence of bad debts in its accounts to accord with Chartered Institute of Public Finance and Accountancy (CIPFA) recognised best practice.

9.4 Bad debts will be identified in the Councils' accounts. This is to ensure that accurate records are maintained which reflect recoverable revenue and both accounting and statistical information which may be used for reporting and management purposes is not distorted or overstated.

9.5 Immediately a bad debt is identified it will be written off promptly, to preserve and maintain the principle of accurate and up to date information.

9.6 All write offs must be processed according to the Councils' financial regulations.

- The appropriate authorisation must be obtained for the transaction.
- Evidence to support the request must accompany all submissions for authorisation. The detail and degree of evidence supplied will however, be proportional to the size and nature of the debt involved to achieve the best use of resources.
- Authorisation for a write off includes the responsibility to ensure that all appropriate methods of recovery have been considered or used; suitable research has been undertaken; the logic used to reach any conclusion is

sound; and the circumstances and evidence are appropriately documented and sufficient.

- There should not be any delay in completing the write-off once authorisation has been obtained.

9.7 The cumulative total of debts written off will be monitored to ensure that the incidence of bad debt remains consistent with the Councils' estimates and projections. Periodic checks will be made to ensure that authorised write offs equal the cumulative total within the Councils' systems, that the correct procedures are being followed and work is to the appropriate standard.

9.8 The Council has a strong commitment to eliminate fraud and other activities, which impact upon the public purse. Debts written off do not close the Councils' intention to recover or to resurrect the debt, if further information comes to light.

Debtors who have deliberately or unwittingly created a bad debt by omitting to make satisfactory forwarding arrangements on a change of address should not gain from that situation. If they are traced, the debt concerned, subject to any legal constraints, will be resurrected and recovery recommenced.

Where bad debts are attributed to an individual or company, that information may be retained by the Council and may influence future decisions in relation to the individual or company concerned.

10. **Complaints and Errors**

10.1 Errors or mistakes made in the process of collecting monies and revenue due to the Council will normally be resolved using the Councils' complaints process.

10.2 However, in the process of enforcing payment of outstanding debts it is possible that facts, unknown at an earlier stage but which nullify or influence the situation, only emerge after proceedings have been taken or have been completed.

In the event of that situation occurring the Council will take appropriate action to remedy the situation as far as possible.

- Proceedings will be stopped immediately.
- The debtor's account will be noted to reflect the revised situation.
- Where appropriate the Court involved will be advised.

10.3 Although the Council will make every effort to resolve a misrepresentation of the true situation, once some legal documents have been issued they can only be rescinded or "quashed" at the instigation of the Council.

10.4 Where a Liability Order for Council Tax or Business Rates (Non-Domestic Rates) has been obtained by the Council in good faith, but information received after the court hearing reveals a situation which had it been known at the outset would have stopped the matter going before the court; the Liability Order can be quashed by a Magistrates Court. In these rare cases application will be made to the Court.

10.5 In other situations a judicial review may be required, because of the cost involved in taking an issue to judicial review it is not in the public interest to take that action other than in exceptional circumstances.