

# **South Staffordshire Council Corporate Debt Recovery Policy**

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## **1 Corporate Debt Recovery**

### **1.1 Introduction**

The purpose of this document is to outline South Staffordshire Council's policy on the billing, collection and recovery of money owed to the Council. Money is collected by the Council for a variety of reasons and the delivery of essential Council services relies on income being collected in an efficient and effective manner.

Money owed to the Council can include both statutory and non-statutory debts, with the methods for billing and recovery of statutory debts generally being expressly prescribed by legislation. This policy will detail some of the statutory requirements, but will also outline our local procedure.

Where the Council seeks to collect or recover any income, demand notices and invoices will be issued promptly and accurately. Where recovery action becomes necessary, the Council will act quickly, fairly and impartially, having due regard to the welfare and human rights of individuals. This policy will provide a clear framework for the recovery of debt to ensure a fair and consistent process.

### **1.2 Policy Objectives**

The objectives of the Council's Corporate Debt Recovery Policy are:

- To maximise income collection and minimise debt owed to the Council to support the delivery of key Council services for the citizens of the District.
- To maintain a fair and consistent approach to debt recovery whilst recognising and responding to individual circumstances, where the Council is made aware of these.
- To give consideration to the circumstances of vulnerable individuals and where appropriate, signpost individuals to relevant services within the Council or external partner organisations.
- To take a "reasonable" approach to debt recovery.

### **1.3 Scope of the Policy**

This Policy details the principles that the Council will apply in relation to debt management across the following types of income:

- Council Tax
- Non-Domestic Rates (or Business Rates)
- Housing Benefit Overpayments
- Sundry Debts (for Council services)

There are specific rules and regulations which govern the recovery and collection of each type of debt and these are set out in this policy.

#### **1.4 Policies applied to all debts**

It is the Council's aim that:

- Every demand notice, invoice or recovery notice issued will be correctly addressed to the person or organisation liable to pay. The name used will be that of an individual or a body possessing "legal personality" and the address used will be the last known address.
- All documents issued, will be done so within the prescribed statutory timescales, in a timely manner and in accordance with the Council's corporate guidelines.
- Notices will provide clear details regarding the debt, contact details of the Council and information outlining potential action should payment not be forthcoming.

#### **1.5 Method of Debt Recovery**

##### *Payments*

The Council will endeavour to use the most effective and efficient method of collecting and recovering debt, giving consideration to the individual circumstances of cases where those circumstances are known. In order to maximise income, the Council will encourage payment by the most cost effective method with the emphasis being on automated, electronic means where appropriate.

##### *Payment arrangements*

Authorised Officers will have the power to intervene in the recovery cycle in appropriate circumstances, to address hardship or dispute situations. This will include the ability to make deferred payment arrangements where immediate payment is impossible due to financial or personal circumstances.

Anyone experiencing such difficulty is encouraged to contact the Council at the earliest opportunity to discuss repayment options. Where contact is made consideration will be given to entering into an individual repayment arrangement based on the debtor's personal circumstances.

The principles that will be followed in determining repayment arrangements are;

- The Council will seek repayment of all outstanding arrears as soon as possible and in all instances before the end of the financial year,
- Payment arrangements extending beyond the end of the financial year should only be made in exceptional circumstances following a detailed assessment of the debtor's ability to pay,

- Repayment should commence promptly and the first payment of any payment arrangement should normally be payable within no more than one month of the agreement being reached,
- Where liability is ongoing any arrangement will require payments to be over and above the on-going monthly liability, except in the most exceptional circumstances (for example where a debtors financial circumstances are expected to improve in the near future),
- Where a payment arrangement is accepted at less than the rate at which liability is accruing, any arrangement agreed should be for a temporary period and should be kept under review.
- Payment arrangements should not normally be for less than could be obtained by attachment of earnings or deductions from benefits unless there are extenuating circumstance,
- Payment arrangements should be refused where it is considered that entering into an arrangement may jeopardise the likelihood of the Council recovering payment in full (e.g. if there is a risk the debtor will be declared insolvent),
- Payment arrangements may be refused where the debtor appears to have sufficient assets which could be realised to pay the debt but the debtor is unwilling to take steps to realise the assets.

Payment arrangements will normally be confirmed in writing or email so that the debtor is aware of the amount and frequency of their payments.

The Council reserves the right to refuse to accept offers of repayment.

### **1.6 Promoting the Take Up of Benefits and Entitlements**

Where the debt could be reduced by application of a benefit or discount, the Council will be proactive in making the debtor aware of the appropriate benefit or discount and the debtor will be advised on how best to complete the application process.

### **1.7 External Partners**

The Council supports the work undertaken by external agencies in providing advice and advocacy to debtors and will work co-operatively with them (where authorised to by the debtor) in connection with debts due to the Council.

Wherever possible, Officers will provide information about advice agencies to support a customer in need of financial assistance.

### **1.8 Costs**

Where legislation permits, we will seek to levy and recover from the customer any and all costs/fees that are legitimately due from the customer to the Council or its agents.

Any charges associated with recovery of debt (i.e. Court costs) will be regularly reviewed to ensure they are reasonable, proportionate and commensurate with the costs charged by other local authorities.

The Council will consider waiving costs and fee's in exceptional cases or where the Council is of the view such action would improve financial hardship or debt recovery.

### **1.9 Appeals and Complaints**

Where an appeal has been received or further information has been requested, it will be usual practice for recovery action to continue. However, the Council may decide to suspend recovery action on the debt in appropriate cases.

All complaints received will be dealt with in line with the Council's corporate complaints procedure. Complaints will be treated seriously and thoroughly investigated in every case.

### **1.10 Monitoring**

The Council recognises that prompt and proactive recovery action is crucial in maximising income for the Authority and managing debt in a responsible way.

To achieve this, the Council will undertake to:-

- Progress on collection rates will be monitored on a regular basis and reported periodically to the Cabinet Member for Welfare Services and the Section 151 Officer. Remedial action will be considered and recommended where collection targets are not being met.
- Monitor the level and age of debt outstanding to the Council on a regular basis.

### **1.11 Approach to Debt Enforcement**

The Council will always aim to collect all balances due from businesses and individuals. However, it is inevitable that some business and individuals may experience difficulties in paying outstanding debts and further enforcement action will be required to recover debt arrears.

Where debt recovery becomes necessary, the Council is committed to operating under a framework of:-

**Proportionate action** - the Council will give proper consideration to the available options when seeking to recover debts, taking into account the cost of collection, the size of debt outstanding and the likely effect of any action on the debtor balanced against the potential loss of income to the Council.

**Transparency** – the Council will be open and honest in its decision making. If action is required, the reasons why will be clearly explained. Consequences of payments not being

made will be clearly outlined. The Council will be proactive in helping customers to understand what is expected of them and what they can expect from the Council.

**Fairness & Consistency** – the Council will aim to achieve consistency in the advice given and the recovery actions taken. Officers will also need to take into account a number of other factors to ensure that everyone is treated fairly but as an individual.

### **1.12 Vulnerable Individuals**

The Council recognises that some individuals may have a particular vulnerability which could affect their ability to manage their financial affairs. Those considered to be vulnerable could include:-

- Individuals with a physical or learning disability
- Those suffering from a life threatening illness
- Those rendered vulnerable by their age
- Those suffering from a recent bereavement
- Pregnant women

This list is not exhaustive.

The Council is committed to supporting customers who might be classed as vulnerable in the recovery of their debts so it is important that you contact us if you believe that you are vulnerable, or that someone you are acting on behalf of is vulnerable.

Where enforcement action is pursued on behalf of the Council and an enforcement agent becomes aware that an individual may be “vulnerable”, the enforcement agent will stop action immediately and seek to support the customer through their own welfare team or obtain guidance from the Council on how to proceed.

The Council will endeavour to establish whether an individual may have a vulnerability which could affect their ability to manage their financial affairs before consideration is given to Bankruptcy or Committal proceedings.

### **1.13 Irrecoverable Debts**

The Council will always seek to minimise the cost of irrecoverable debts to the Council Tax payers of the District by taking appropriate action to recover outstanding debt.

However, the Council recognises that where debt is deemed to be irrecoverable, prompt and regular write-off of such debts represents good financial practice.

Any debts which are to be considered for write-off must comply with one of the circumstances stated below:-

## Corporate Debt Recovery

- Legally excused debt
- Small balance on account
- Current address of debtor is unknown (untraceable)
- Debtor is deceased
- Balances unsuccessfully pursued by an enforcement / collection agent
- Not in the Council's or public's interest to pursue further
- Recovery procedures exhausted
- Balance subject to an Administration Order, Individual Voluntary Arrangement or Debt Relief Order
- Individual subject to bankruptcy / insolvency procedure
- Company in Liquidation / Insolvent, subject to a Company Voluntary Arrangement, in Administrative Receivership or ceased to trade (insufficient assets)
- Council Error
- Previous evidence of no assets and genuine inability to pay
- Out of time debts /old debts
- Charging Orders and Deferred Payment Schemes
- Full and final settlements
- Where it is not cost effective to recover the amount outstanding

Referral for write-off will be made a Council Officer, who will consider all of the circumstances of the case before making a reasoned decision.

The authorisation of the write off referral will be conducted by an Authorised Officer.

In the case of Council Tax, Business Rates or Housing Benefit Overpayment, all write off's are processed by the Revenues team and are reported to and subject to a final authorisation process by the Leader of the Council.

In the case of Sundry Debts, once authorised to do so, the write off's are processed by the Finance team and are reported to and subject to a final authorisation process by the Leader of the Council.

The Council reserves the right to reverse any debt previously written off and to continue debt recovery action if the circumstances permit.

### **1.14 Exceptions to the Policy**

On rare occasions it may be in the best interests of the Council or local residents for action to be taken in the collection or recovery of a debt other than in accordance with this Policy. On such occasions a decision may be taken by the Revenues Team Manager to allow an exception to the Policy having considered the normal requirements of the Policy, the specific case and the interests of the Council and local residents.



## **2 Council Tax and Non-Domestic Rates Recovery**

### **2.1 Introduction**

Council Tax is a local tax payable for domestic or residential properties. The amount of Council Tax charged is dependent on the Council Tax valuation band that the property falls into and the amount of tax each council charges for that Council Tax band locally. Non-Domestic Rates (usually known as business rates) are a tax payable for eligible business properties. The amount of business rates charged is calculated using the rateable value of the property and a national “multiplier” which is set by central Government on a yearly basis.

The Council and its Officers is under a statutory duty to collect outstanding debts in accordance with the Council Tax (Administration and Enforcement) Regulations 1992 and the Non Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended).

### **2.2 Policy**

#### *Billing of Council Tax and Non-Domestic Rates*

The Council will bill, collect and recover all debts in an economic, effective and efficient manner in accordance with legislation and best practice. Council Tax annual bills will be issued as soon as is practicable after the Full Council has set the Council Tax for the forthcoming financial year. Non-Domestic Rates annual bills will be issued as soon as is practicable after the amount of liability is calculated.

#### *Payment of Council Tax and Non-Domestic Rates*

Payment for Council Tax and Non-Domestic Rates will be due on 1<sup>st</sup> of each month unless alternative arrangements have been agreed (such as Direct Debit plans). Where a taxpayer or ratepayer can demonstrate an inability to make payment on 1<sup>st</sup> of each month, Officers will have the discretion to vary the instalment dates; however the final instalment will usually fall due before 31<sup>st</sup> March of the financial year in question.

### **2.3 Non-payment of Council Tax and Non-Domestic Rates**

For Council Tax, the following demand notices will be issued upon non-payment of an instalment:-

- First Reminder Notice: issued where a Council Tax payer falls into arrears for the first time in a financial year.
- Second Reminder Notice: issued where a Council Tax payer falls into arrears for a second time during the same financial year.
- Final Notice: issued where a Council Tax payer defaults on their instalment plan for a third time during a financial year. At this point, the Council Tax payer will lose the

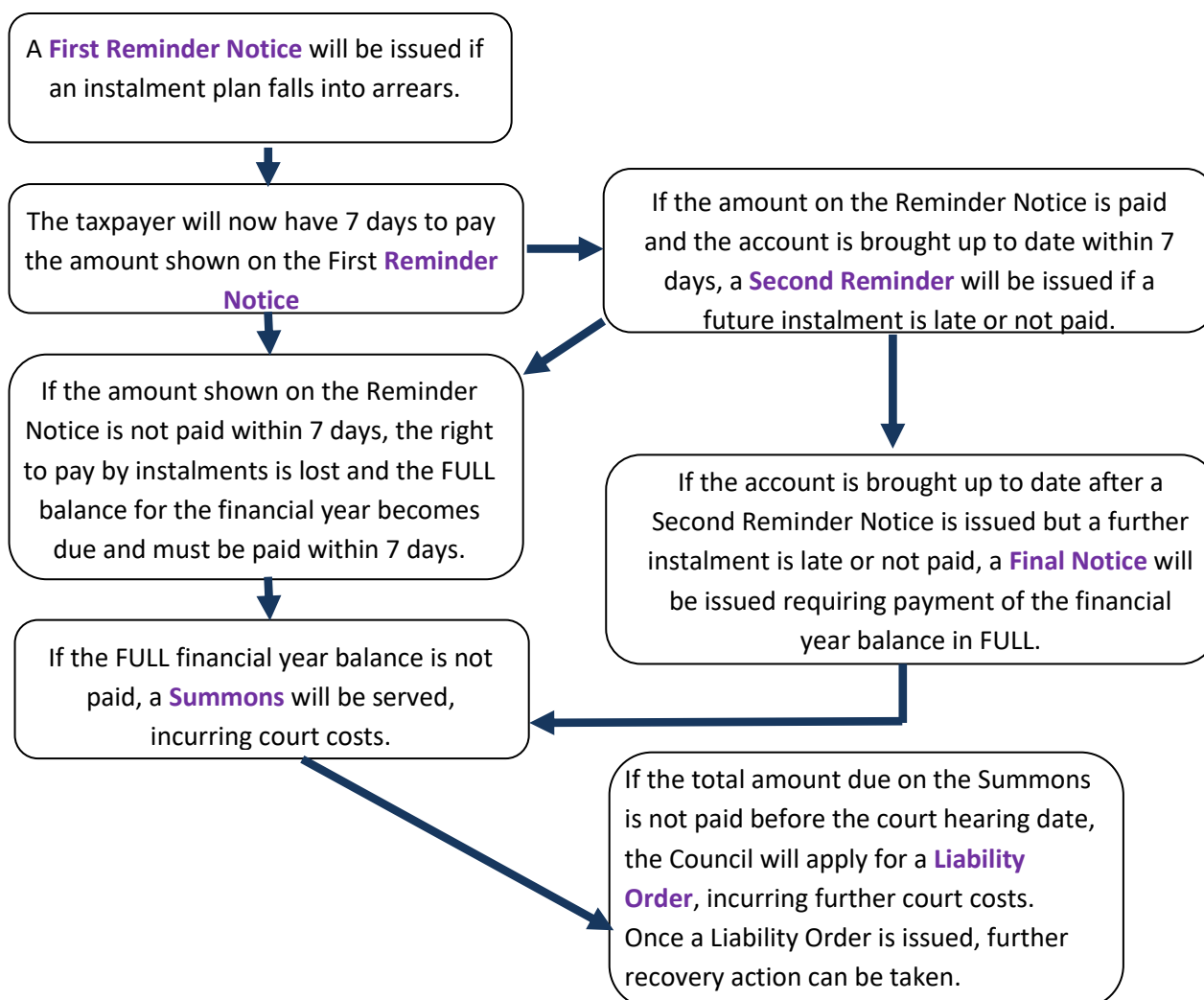
right to pay the remaining year's debt by instalments and the whole amount will become due.

Reminders and final notices will be issued within 14 days of the payment default to which they relate, as far as is operationally practicable and in line with a recovery timetable which will be set at the commencement of each financial year.

Where full payment is not made in accordance with the latest notice sent, a Magistrates' Court Summons will be issued, advising the taxpayer of a hearing date on which the Council will apply to the Magistrates' Court for a Liability Order. The summons will be issued as soon as is reasonably practicable after the default to which they relate has occurred. An additional court cost for the issue of the summons will be added to the debt at this point.

If full settlement of the debt (including summons costs) is not made before the date of the hearing, the Council will apply to the Magistrates to grant a Liability Order.

The diagram below gives an overview of the recovery process where late or no payment is made against an instalment plan:-



Costs associated with court summonses and Liability Orders will only be withdrawn in exceptional circumstances.

## 2.4 Recovery Action Following Non-payment

At any point from the date a summons is issued, the debtor will be given an opportunity to make a reasonable payment arrangement. Arrangements can be agreed by an Officer and will usually only be accepted where:-

- The arrangement clears the outstanding debt by the end of the current financial year
- The debtor's offer of payment is reasonable in relation to the amount that could be recovered through alternative means of recovery action
- The debtor demonstrates a clear intention to honour the terms of the agreement
- The debtor provides their contact information and details of their employment, where appropriate.

Should the debtor not make or keep to a payment arrangement the following methods of recovery action(s) can be taken:-

- **Deductions from Benefits** \* - deductions will be made from a debtor's Income Support, Jobseeker's Allowance, Employment Support & Allowance, Pension Credit or Universal Credit.
- **Attachment to Earnings** \* - deductions will be made from a debtor's earnings at the rate set down in legislation.
- **Attachment of Members' Allowance** \* - deductions will be made from the Allowances paid to Elected Members.
- **Taking Control of Goods** – Enforcement Agents acting on behalf of the Council will be empowered to take control of goods owned by the debtor and sell them to discharge the debt owed.
- **Insolvency** – the Council can instigate bankruptcy or liquidation proceedings.
- **Committal to Prison** (individuals only) – The Council may apply to the Magistrates' Court for an order to commit the debtor to prison. See further notes on committal to prison below.
- **Charging Orders** – The Council may apply to the County Court to place a charge on property owned by the debtor where their debt exceeds £1000.00. In some cases, the County Court can force the sale of the charged dwelling.
- **County Court proceedings** – the Council can apply to the County Court as an alternative to the Magistrates' Court.

\*Applicable to Council Tax debts only

The method of recovery action used will be dependent on the individual circumstances of each case. Each case is individually reviewed before recovery action is taken.

If a debtor is in receipt of an appropriate welfare benefit, the Council will attempt a Deduction of Benefits prior to referring any cases to the Enforcement Agents.

Where debts cannot be recovered, the debt will be written off as outlined in paragraph 1.13 of this policy.

## **2.5 Committal to Prison – further information**

In cases where all other methods of recovery action including enforcement agent referral have been unsuccessful in recovering a Council Tax or Non-Domestic Rate debt, the Council may choose to pursue committal to prison action via the Magistrates' Court against individuals.

Before pursuing cases for Committal, due to the severity of taking such an action, consideration will be given to the individual's circumstances both personally and financially. Consideration will also be given to the cost effectiveness of taking such action.

### **3 Housing Benefit Overpayment Recovery**

#### **3.1 Introduction**

Housing Benefit and Council Tax Support overpayments are amounts of benefit that have been awarded but to which no entitlement exists. Overpayments can occur for a number of reasons including claimant error, council error errors or official errors made by the Department for Work & Pensions, late notification of changes in circumstances, fraudulent claims or payments made in advance.

#### **3.2 Policy**

##### *Calculation of Housing and Council Tax Benefit/Support Overpayments*

The Council is mindful of the detrimental impact that overpayments of benefit can have on individuals and families already receiving a low income and will endeavour to prevent overpayments from occurring and minimise any overpayments that do occur wherever possible by:-

- Identifying and calculating overpayments promptly – on average, within 14 days of receiving all necessary information
- Inviting and encouraging claimants to apply for underlying entitlements to benefit
- Promptly and accurately determining recoverability of the overpayment.

#### **3.3 Recoverability of Housing and Council Tax Benefit Overpayments**

The Council has a statutory duty to protect public funds and will endeavour to collect all recoverable overpayments in full. Authorised Officers may, in appropriate circumstances, make a recommendation to write-off a debt.

Where it is established that an overpayment is recoverable, the Council will decide who the most appropriate party to recover the overpayment from is, depending on the circumstances of each case which may include:-

- The claimant; or
- The claimant's partner, if that partner was living with the claimant at the time that the overpayment was made and at the point that the decision to recover was made; or
- The person who received the benefit payment, e.g. the landlord.

In cases where an overpayment has been caused by a proven fraud, the Council will attempt to recover the debt from the person who misrepresented or failed to disclose a material fact in the first instance.

### **3.4 Method of Overpayment Recovery**

Overpayments of Council Tax Support (where recoverable) will generally be debited to the Council Tax account of the claimant and will be billed, collected and recovered as a normal Council Tax charge as detailed in the Council Tax & Non-Domestic Rates Recovery section.

The method of recovery for Housing Benefit overpayments (where recoverable) may be by any of the following means:-

- Offsetting against arrears of or underlying entitlement to Housing Benefit
- Deducted from ongoing entitlement to Housing Benefit – this will be at a recovery rate based on DWP guidelines and will be at the maximum rate permissible. An Authorised Officer may alter this rate where demonstrable hardship is proven.
- Deducted from other DWP benefits such as Income Support, Jobseekers' Allowance, Employment & Support Allowance, Pension Credit or Universal Credit
- By deducting from the Housing Benefit received by a landlord or raising an invoice to the landlord
- By referral to an external debt recovery agent
- By application for a County Court Order or Judgement which enables the Council to use additional recovery methods such as an attachment to a debtors earnings, court bailiff recovery or insolvency.
- Deducted from earnings by a Direct Earnings Attachment under the Social Security (Overpayments and Recovery) Regulations 2013.

The method of recovery used will always depend of the circumstances of each case but where the overpayment is recoverable from a claimant, the Council will always attempt to recover from arrears of underlying entitlement or ongoing entitlement to Housing Benefit in the first instance.

### **3.5 Non-payment of Housing Benefit Overpayment Invoices**

For Housing Benefit overpayments where the customer is not in receipt of an ongoing entitlement to benefit, an invoice will be issued requesting payment. The following process will be instigated where payment is not made and a suitable payment arrangement is not agreed:-

- First Reminder Notice – issued 30 days after an invoice has been sent and remains unpaid.
- Final Demand – issued 14 days after First Reminder Notice is issued and remains unpaid.
- Telephone Call – where a telephone number for the debtor can be ascertained, an authorised Officer may attempt to contact the debtor by telephone to agree payment.
- Where the debt remains unpaid or a reasonable arrangement for payment has not been made, the Council will prepare the case for recovery using one of the methods

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detailed above and a final letter outlining the action to be taken will be issued to the debtor.

- Where debts cannot be recovered, the debt will be written off as outlined in paragraph 1.13 of this policy.

## **4 Sundry Debt Recovery**

### **4.1 Introduction**

The Council provides a range of services for which a charge is made, for example for use of leisure facilities. Generally, payment for these types of services is obtained in advance or at the time of service delivery by the Council business unit who are delivering the service but where payment in advance is inappropriate, a Sundry Debtor invoice will be issued.

### **4.2 Billing of Sundry Debts**

Responsibility for Sundry debts is held jointly by the service area that the makes the charge for service and the Revenues Service. Billing and collection are performed by the Finance team and recovery of the debts is undertaken by the Revenues Team, however the originating service area should also be aware of debts which are outstanding for their area. Any issues, queries and disputes relating to validity of the debt must be raised directly with the originating service area.

The Council will issue an invoice for any charges not collected in advance or at the time of service. The settlement terms for all invoices will be deemed to be 14 days from the date of issue of the invoice, unless terms are altered expressly by contract or an invoice payable by instalments is issued.

### **4.3 Non-payment of Sundry Debts**

The following demands will be issued upon non-payment of a Sundry invoice:-

- Reminder Notice - issued 14 days after the issue date of the invoice.
- Final Notice – issued 7 days after the issue date of the Reminder Notice.

Where permitted legally, the Council may suspend the provision of further services to the debtor until the outstanding debt is settled.

### **4.4 Recovery of Sundry Debts**

Where a Sundry debt remains unpaid or a reasonable arrangement cannot be agreed after the stages detailed above, the debt will be recovered by the Revenues team which will involve attempts to contact the debtor to seek payment of the outstanding invoice. If the invoice remains outstanding, the Council will consider preparing the case for recovery by applying for a County or High Court Judgment order and a final letter outlining the action to be taken will be issued to the debtor. A Court Judgment order enables the Council to pursue recovery of the debt by a statutory method of enforcement which may include:-



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- Deductions from a debtors earnings via an Attachment of Earnings order
- Warrants of execution - allowing a County Court bailiff or High Court Enforcement Officer to take the debtors goods for sale to repay the debt
- Garnishee Orders – allowing the Council to recover outstanding debts from a third party who holds money belonging to the debtor such as from a bank account.
- Insolvency Orders – allowing the Council to institute bankruptcy or liquidation proceedings where the amount exceeds £5000.
- Charging Orders - the Council may apply to place a charge on property owned by the debtor where their debt exceeds £1000. In some cases, the County Court can force the sale of the charged dwelling.
- High Court enforcement action

The decision to instigate County Court action is made by the service area that makes the charge for service following consultation with the Revenues team.

The method of recovery action used will be dependent on the individual circumstances of each case. Prior to instigating County Court Action, consideration will also be given to the amount outstanding and the cost of recovery when deciding how the debt should be pursued.

Where debts cannot be recovered, the debt will be written off as outlined in paragraph 1.13 of this policy.