

**TAMESIDE COUNCIL  
DEBT RECOVERY POLICY**

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**APPENDIX ONE - COSTS**

## **INTRODUCTION**

This document sets out the Council's procedures in relation to the recovery of unpaid Council Tax, business rates and sundry debts. The document purpose is to ensure that the recovery of Council Tax/business rates or sundry debts that are not paid when due, are administered in an effective, fair, proportionate and consistent way. This document does not affect the statutory rights of the Council, taxpayers or those that owe a sundry debt.

The recovery of debts is covered in 4 parts in this document as follows:

Part One – Council Tax and Business Rates debts

Part Two – Sundry Debts

Part Three – Adult Social Care Charges

Part Four – Housing Benefit Overpayments

## **PART ONE – COUNCIL TAX AND BUSINESS RATES**

### **1 RECOVERY PROCEDURE UP TO LIABILITY ORDER**

#### **1.1 Demand Notice (Bill)**

At the beginning of the financial year, or when a new Council Tax account/business rates liability commences, a demand notice (Bill) will be sent to the taxpayer detailing the Council Tax/business rates owed for the tax year and the amount and due dates of any instalments. The demand notice is usually known as the Council Tax or business rates bill.

If there are any changes to an account which alters the amount of Council Tax/business rates due for the year then a further adjustment notice will be sent to the taxpayer. This informs the taxpayer of any changes to the Council Tax/business rates due or to changes in the amount of payment instalments due.

Payment must be made in accordance with the instalments on the demand notice, however if there is no right to pay by instalments, then the full amount on the notice must be paid within seven days. A demand may be issued against one or more joint taxpayers/business ratepayers in respect of an amount for which they are jointly and severally liable. Recovery procedures for the full sum owed may be applied to one or more than one of the joint taxpayers/business ratepayers.

#### **1.2 Reminder and Final Notices**

The recovery of Council Tax/business rates is governed by legislation contained in the Council Tax (Administration and Enforcement Regulations) 1992. If a taxpayer has the right to pay by instalments but does not pay an instalment by the due date then a text message or email Reminder may be sent to advise the Council Tax payer that payment is due. If a payment is not received within 7 days of the instalment date to bring the account up to date then a Reminder notice will be issued and we will ask the taxpayer to pay the missed instalment within a further seven days.

If the missed instalment is received within seven days, no further action will be taken. If it is not paid then the right to pay by instalments is lost, and the remaining Council Tax/business rates for the entire year becomes due. If the amount remaining for the year is not paid, then a summons to appear at a liability order hearing at the Magistrates' court will be issued. Council Tax must be paid in accordance with the payment instalment detailed on the Council Tax bill or your Council Tax payment arrangement letter. Wherever a payment is made that does not match an instalment due, then the processing system will automatically credit the payment to the oldest debt. This is how the system addresses such payments and is common to system software.

If the missed instalment is received within seven days, but another instalment is not paid, then a second Reminder notice will be issued. If the missed instalment is received within seven days no further action will be taken. If the missed instalment is not paid then the right to pay by instalments is lost and the remaining Council Tax/business rates for the entire year becomes due. If this is not paid then a summons to appear at a liability order hearing at the Magistrates' court will be issued.

If the account is brought up to date but falls behind for a third time, a Final Notice for the full outstanding amount for the tax year will be issued as the right to instalments is lost. If this is not paid in full within seven days then a summons to appear at a liability order hearing at the Magistrates' court will be issued in due course.

### **1.3 Summons**

Where Council Tax/business rate payers fail to respond to any Reminder notice or Final Notice or defaults on an arrangement to pay following the issue of notices, the Council will apply to the Magistrates' court for a liability order to be issued.

A summons to appear at a liability order hearing at the Magistrates' Court will be sent to each person named on the bill and summons costs will be added to the account. These costs are reviewed annually.

A summons will always be issued within at least 14 days between issue and the court hearing date. The summons will state the amount due and the time and place of the court hearing. The summons will normally be served by second-class post.

If a Council Tax/business ratepayer pays the amount of the summons including the costs prior to the court hearing; then the application will not proceed and we will not obtain a liability order. If the Council Tax/business ratepayer does not pay the summons amount including costs in full prior to the hearing, the hearing will proceed and we will ask the Magistrates to grant a liability order plus additional costs.

Any time after a summons is issued, the Council will consider making an arrangement to pay the amount due on the summons including costs. If an arrangement is made at this stage, a liability order will still be obtained to secure the debt. However, if payments are received as per the terms of the arrangement, no further action will be taken. We may refuse to make an arrangement if a debtor's current employment and benefit details are not supplied where applicable.

If the Council decides that a summons has been issued incorrectly, then it will be withdrawn, and no costs will be charged.

### **1.4 Liability order hearings**

A Council Tax/business rate payer has a right to attend a hearing and a right to give evidence as to why a liability order should not be granted by the Magistrates. If they do not attend, the hearing will still proceed in their absence. His Majesties Court and Tribunal Service (HMCTS) may determine that the hearing is held remotely rather than in-person.

If the Magistrates are satisfied that the Council Tax/business rates are payable and remains unpaid, then they are required to issue a liability order.

If a Council Tax/business rate payer wishes to defend an application for a liability order, they must offer a valid defence against it. Valid defences include:

- the Council has not demanded Council Tax/business rates in accordance with the regulations
- the amount has been paid in full with costs
- the person named on the summons is not the liable person

- the Council has already commenced bankruptcy or winding up proceedings, which include the unpaid Council Tax/business rates concerned.

It is not a valid defence if the taxpayer for example:

- is unable to pay
- has recently applied for Council Tax/business rates discount or exemption or applied for Council Tax support
- has applied to the Valuation Office Agency to check/challenge their Council Tax band/business rates rateable value
- has appealed their liability to the Valuation Tribunal.

Obtaining a liability order incurs costs for Council Tax and for business rates. These costs are reviewed annually.

## **1.5 Costs**

Summons and liability order costs will be added to a debtor's account and will be included as part of their debt to be repaid.

Costs reflect the administrative cost, enforcement and tracing fees to the Council and the court fees incurred. Therefore, costs will only be removed from an account in exceptional circumstances as determined and agreed by the Council. Where a debtor pays the unpaid Council Tax due, but does not pay the costs owed, these will still be pursued as a debt using the actions detailed in the sections below. Summons costs are detailed in Appendix One.

## **2 RECOVERY PROCEDURE AFTER A LIABILITY ORDER IS GRANTED**

### **2.1 Liability Orders**

A liability order gives the Council certain powers to enforce the unpaid Council Tax/business rates debt.

Once a liability order is granted for Council Tax debts, we can:

- ask for financial information, including employment and employer details
  - take money directly from wages using an attachment of earnings order
  - take money directly from benefits including Universal Credit, Income Support, Jobseekers Allowance, Pension Credit or Employment Support Allowance
- instruct civil enforcement agents to collect the debt on the Council's behalf
- seek a charging order against property
  - start bankruptcy proceedings
  - start committal proceedings for imprisonment of up to three months.

A liability order may be made against one or more joint taxpayers in respect of an amount for which they are jointly and severally liable. Recovery procedures for the full sum owed may be applied to one or more than one of the joint taxpayers.

Once a liability order is granted for business rates debts, we can:

- instruct civil enforcement agents to collect the debt on the Council's behalf
- start bankruptcy proceedings against an individual
- start committal proceedings for imprisonment of up to three months.

## **2.2 14 Day Notice for Council Tax debts**

Once a liability order is granted, the Council may issue a 14 Day Notice to demand the debtors income details. The debtor must provide their income details to the Council within 14 days of the demand notice being issued. The Council may then use this information to attach the debt to either earnings or benefits and may serve these to obtain up to date income details if other recovery methods have failed.

## **2.3 Further Summons for failing to provide income details pertaining to Council Tax debts**

A further Magistrates Court summons may be issued to debtors that do not provide their income details when requested. The Council may withdraw the summons if income information is provided prior to the hearing date. The Magistrates may consider a fine where information is not provided.

## **2.4 Payment arrangements after a liability order**

Debt repayment arrangements may be made after a liability order has been granted, subject to the specific requirements in addition to those detailed above.

Repayment arrangements, which are greater than the value of attachment of earnings for Council Tax debts, will be approved or which clear the debt within the current tax year. A debtor must also not have defaulted on any previous repayment arrangement and where this is the case a further repayment arrangement will only be made in exceptional circumstances as determined by the Council.

Where there is a request for a payment arrangement, evidence of income and expenditure may be requested. This may include wage slips, bank statements and energy bills.

## **2.5 Attachment of earnings for Council Tax debts**

Where the Council has been given a debtor's employment details, the Council may issue an order to the debtor's employers to make deductions from their earnings. Employers are legally required to comply with the order. The amount that can be deducted is prescribed by law and depends on the debtor's earnings as detailed in Appendix One.

A letter confirming the amount to be deducted will be sent to the debtor and to the employer when the order is issued. Each attachment is for one liability order, and a maximum of two attachments of earnings can be applied at any given time. Where we are considering issuing more than one order, the most recent debt takes first priority.

The Council will usually attach earnings where it will clear the debt in the current tax year. Attachments that will not clear the debt in the current tax year will be decided on a case-by-case basis, considering the total amount of debt and time it will take to clear the debt. If an attachment will not clear the debt in a reasonable time or if it is otherwise considered inappropriate, then the Council will consider another recovery action.

An attachment to earnings will only be cancelled in exceptional circumstances. In cases where a debtor claims hardship because of an attachment, the individual circumstances will be considered in deciding whether to cancel the attachment. The Council will require evidence of any claimed hardship. This will usually include evidence that they cannot afford to pay for essential expenses such as their housing costs, utilities or food.



## **2.6 Deduction from benefits for Council Tax debts**

Deductions can be made from Universal Credit, Job Seekers Allowance, Pension Credit, Income Support and Employment Support Allowance to pay liability orders for unpaid Council Tax. The amount of deduction is set by central government and is detailed in Appendix One.

If a debtor is receiving one of these benefits, the Council may ask the Department for Work and Pensions (DWP) to make regular deductions from the benefit and make payments to the Council. Only one deduction can be applied at any one time although applications can be stacked if there is more than one year's debt outstanding.

This action is taken where the Council has details of the debtor's benefit and where the deduction will clear the debt in the current tax year. Deductions that will not clear the debt in the current tax year will be decided on a case-by-case basis, considering the total amount of debt and time it will take to clear the debt. If a deduction will not clear the debt in a reasonable time or if it is otherwise considered inappropriate, then the Council may consider another recovery action.

A deduction from benefits will only be cancelled in exceptional circumstances. In cases where a debtor claims they will suffer hardship because of a deduction, the individual circumstances will be considered in deciding whether to cancel it. The Council will require documentary evidence of any claimed hardship. This will usually include proof that they cannot afford to pay for essential expenses such as their housing costs, utilities or food.

## **2.7 Enforcement agents**

The Council will consider other recovery action before civil enforcement agents are requested to collect the Council Tax or Business Rates debt where appropriate.

If the following circumstances apply, then the debt will be passed to the Council's civil enforcement agents:

- there has been no contact from the debtor despite request to do so;
- if no payment arrangement has been agreed or maintained;
- if the debtor has not provided us with employer or benefit details and the debt relates to Council Tax

Debtors will be advised in writing at least 14 days prior to the enforcement agents' visit together with the fees that may be charged. Fees charged by civil enforcement agents are prescribed by law and are detailed at Appendix One.

Once a debt is referred to civil enforcement agents, any payments either made to them or directly to the Council; will be applied to the agent's fees first before paying the debt owed to the Council. If a debt has been passed to civil enforcement agents and payment is made directly to the Council without including the civil enforcement agent's fees, then the civil enforcement agent will continue the enforcement process for their fees incurred.

Enforcement agents may make an acceptable payment arrangement with the debtor to repay the sums due or levy distress on goods owned by the debtor to satisfy the amount outstanding. If civil enforcement agents cannot identify sufficient goods to clear the debt or cannot gain lawful entry to the property; then they will send a certificate to the Council to confirm this. Other courses of recovery action in this procedure will then be considered.

The Council will ensure as far as possible that the information, the civil enforcement agent holds is up to date and accurate. Enforcement agents are expected to operate in a fair and consistent manner and are subject to regular review based on collection performance and conduct. Civil enforcement agents are also required to follow the Council's Code of Conduct.

The Council will only consider withdrawing a debt from civil enforcement agents in exceptional circumstances, for example, when a person is or may be vulnerable. However, the Council have determined that vulnerability itself does not stop use of civil enforcement agents, although an identified vulnerability will be taken into consideration when making any contact or agreement with the customer. Requests for withdrawal are considered on a case-by-case basis and the decision made will be based on individual circumstances. Any cases that are identified as vulnerable will be dealt with by the enforcement agent's specialist vulnerability/welfare team.

### **3 FURTHER RECOVERY ACTION**

Where the actions in section 2 have been unsuccessful in recovering all of the debt owed or when they are considered inappropriate the Council may consider further recovery actions.

These include:

- making the debtor bankrupt
- seek a charging order against property owned by the debtor
- seeking committal to prison.

All of these actions may have serious consequences for the debtor. They will therefore always be considered on a case-by-case basis, taking individual circumstances into account. Other legal actions outside of this procedure may also be considered where appropriate. This can include for example, the forcing the sale of a property if this is deemed a necessary and proportionate action and which may be considered for empty properties or where more than one property is owned.

#### **3.1 Warning letter**

Debtors will receive notice in writing which will be sent to their last known address when the Council is considering further legal action. These warning letters will include:

- clear warning of the actions being considered, their likely cost and the seriousness of their consequences
- a request that the debtor contact the Council to try and make an arrangement to pay the debt and information as to the consequences of failing to respond
- the date by which they must respond
- a recommendation that they seek debt advice from a local non-profit advice agency and details of how they can be contacted.

#### **3.2 Factors to take into consideration**

When considering further recovery action, the Council will investigate the circumstances of the debtor and consider:

- impact of non-payment on revenues and the need to deliver services to the community
- equality between those who do pay and those who don't
- why other recovery methods are not appropriate
- whether action is likely to be effective
- the potential debt that may be recovered by the action and whether the likely costs of the action are proportionate to it
- whether the debtor's failure to pay may result from a vulnerability or disability and, if so, what action is appropriate as a result
- the potential effect of the action on any known dependants
- the need to prevent homelessness and whether the action may cause it
- any other circumstances, which may warrant protection from the consequences of the action.

An investigation into a debtor's circumstances will include:

- an attempt to contact the debtor in person, including a home visit if necessary
- data about the debtor shared by other areas of the Council including but not limited to Benefits, Income Services, and Electoral Registration
- data about the debtor shared by other public bodies as permitted by the Data Protection Act 1998 and General Data Protection Regulations (GDPR) 2018.

Written records of the above will be kept with:

- details of attempts to contact the debtor
- the information gathered, consideration of whether the action is proportionate to the likely debt to be recovered and the reasons for proceeding with the action.

### **3.3 Bankruptcy**

Where the debtor is an individual the Council can apply to the County Court or High Court for them to be made bankrupt if they have liability orders for a debt of more than £5,000.00.

This course of action is costly and can have a considerable impact on debtors and members of their household. Before taking this action, the Council will therefore make reasonable attempts to investigate the taxpayer's personal and financial circumstances to determine whether bankruptcy action is appropriate.

The Council is more likely to pursue this action where:

- the debtor has previously broken agreed payment arrangements
- from the information the Council holds they appear to likely have sufficient realisable assets to pay the debt and likely costs
- the likely costs are proportionate to the debt to be recovered
- the taxpayer and members of their household are not vulnerable
- all other enforcement remedies have been exhausted.

A statutory demand will first be served on the taxpayer setting out the debt outstanding, and the options available to them to prevent further action, the time scales in which they need to respond and direct contact details of officers dealing with the case. A guide to the potential bankruptcy costs is included with the statutory demand. No additional costs are incurred at

this stage, and the Council may still agree a payment arrangement with the taxpayer at this stage.

Where the taxpayer has not responded to the statutory demand within 21 days or where the Council is unable to agree arrangements that will discharge the debt, the Council will consider whether a petition for the taxpayer to be made bankrupt should be made to a court.

Where new information is received which suggests that the taxpayer or other members of the household may be vulnerable as per section 2.2, the information will be referred to a Senior Recovery Officer to consider whether this action is still appropriate.

Where a bankruptcy order is made, and a debtor has assets that might be sold to settle a debt, a licensed insolvency practitioner will be appointed by the Court as a trustee to safeguard and secure the assets of the debtor.

The costs associated with this type of action are high, typically running into several thousands of pounds, which are paid by the debtor.

### **3.4 Charging orders**

The Council may apply to the County Court or High Court for a charge to be put on a property owned by the debtor where a Council Tax debt of more than £1,000.00 is owed.

The Council is more likely to apply for a charging order against a property that is either fully or jointly owned by a debtor where:

- the debtor has previously broken agreed payment arrangements
- the debtor has failed to provide employment or benefit details
- no contact can be made with the debtor

The Council will usually contact the debtor again to try and settle the matter without the need for legal proceedings. Legal proceedings will commence if no agreement is reached.

Where new information is received by the Council, which suggests that the taxpayer or other members of the household may be vulnerable, then consideration will be given as to whether this action is still appropriate.

The costs associated with this type of action are high, and will be added to the amount of the order. Where a charging order is granted, other methods of recovery may continue to be used to collect the debt.

The Council may also apply to the court for an order for sale, which may result in the property being sold and the amount subject to the charging order, including costs, being paid from the proceeds of sale. The Council is more likely to apply for an order for sale where the debtor owns more than one property, there is likely sufficient equity in the property to pay the debt and costs and the likely costs are proportionate to the debt owed.

### **3.5 Committal proceedings**

If enforcement agents have been unable to find any or sufficient goods to pay the debt, the Council can apply to the Magistrates' Court to have the debtor committed to prison for a maximum of three months. Committal proceedings are usually the recovery action of last resort when all other actions either have failed or are not appropriate.

The Council is more likely to take committal action against a debtor when:

- enforcement agents have not been able to recover all of the debt
- the debtor has no property or assets
- the debtor has previously broken agreed payment arrangements
- the debtor has failed to provide employment or benefit details
- the debtor is not considered vulnerable
- the debtor has no dependants
- it appears that the failure to pay may be the result of wilful refusal or culpable neglect
- no other recovery action is appropriate.

Where committal action may be appropriate, the Council will write to the taxpayer inviting them to attend an informal interview with Council officers. The interview would discuss their financial and personal circumstances to attempt to resolve the matter without the need to commence committal proceedings.

Where the debtor fails to respond or where an agreement is not reached, the Council will then apply for a summons for the debtor to appear at a hearing before the Magistrate's court.

At the hearing the Magistrates will usually conduct a means enquiry to determine whether the failure to pay the Council Tax concerned was due to 'wilful refusal' or 'culpable neglect'. The Magistrates may make the following decisions:

*Commit to prison:* The Magistrates can decide to send the debtor to prison for up to three months.

*Fix a term of imprisonment and postpone on conditions:* The debtor is usually ordered to pay in instalments as determined by the Magistrates. If payments are made as ordered then no further action is taken. If payments are missed, then the prison sentence will come into force and the debtor can be sent to prison for up to three months.

*Adjourn:* A hearing may be postponed to a later date if, for example, more information or evidence is needed before a decision can be made.

*Dismiss (take no action):* The Magistrates may decide that no further action is appropriate.

*Remit some or all of the debt:* The Magistrates can remit (write off) some or all of the Council Tax owed. If only some of the debt is remitted, the Magistrates may make a court order for the rest.

Where the debtor does not attend the hearing as required, the Council will ask for a warrant of arrest with bail to be issued for a further hearing at the Magistrate's court. A warrant of arrest without bail may be applied for in some circumstances, for example where a debtor has previously not complied with a warrant with bail.

If a term of imprisonment is served, the relevant amount of Council Tax will usually be written off as irrecoverable. A part payment will also reduce the term of imprisonment by the ratio of payment to the total amount of the debt.

The costs of committal proceedings are high and can add hundreds or thousands of pounds to an existing Council Tax/business rates debt, which will be recoverable from the debtor/s.

## **PART TWO – SUNDRY DEBTS**

## **1 RECOVERY PROCEDURE PRIOR TO LEGAL ACTION**

### **1.1 Invoice issue**

An invoice for monies owed to the Council for goods, services, fees or charges is sent to the debtor at the point that it is established that money is owed to the Council. This may be at the beginning of the financial year, or at any point within the year. The invoice will detail the amount due, and due date of any instalments. The invoice is also known as a Sundry Debt invoice.

If there are any changes to an account which alters the amount of money due to the Council then a further adjustment notice will be sent to the customer. This informs the customer of any changes to the amount or date of payment due.

If there is no right to pay by instalments, then the full amount on the invoice must be paid as detailed on the invoice. Where appropriate an invoice will be raised before the goods or services are provided.

### **1.2 Reminder and Final Notice**

If a customer does not pay an instalment by the due date then a Reminder notice will be issued. The customer must pay the amount requested on the Reminder notice generally within 15 days.

If the account is not brought up to date in accordance with the Reminder notice issued then a Final Notice will be issued to the debtor 10 days after the payment was due to be paid in accordance with the Reminder notice.

### **1.3 Further Recovery**

Where the amounts requested under the Reminder and Final Notice are not paid or the account remains in arrears, a contact letter and statement of account is sent to the debtor. The debtor is requested to contact and make an arrangement to pay or pay in full within 14 days and notified of the next stage of recovery if payment is not made. No arrangement will be made without first obtaining the debtor's employment and benefit details.

If there has been no contact from the debtor, if no payment arrangement has been agreed or maintained, if the debtor has not provided us with benefit details if the debt relates to a benefit overpayment, then the debt will be passed to the Council's civil enforcement agents to make contact with the debtor.

Enforcement agents contact the debtor at this stage and request that contact is made direct within 14 days to arrange payment. The debtor may make an acceptable payment arrangement with the enforcement agent without incurring any enforcement agent fees.

In the case of commercial rents, Enforcement Agents can uplift goods and add costs without the permission of the Court.

Where the debt relates to a Housing Benefit overpayment, the Council will seek to take money directly from earnings or from benefits including Universal Credit, Income Support, Jobseekers Allowance, Pension Credit or Employment Support Allowance. This is known as an attachment of earnings or benefit order and the Council does not need the permission of the Court to take this action.

## **2 RECOVERY PROCEDURE WITH LEGAL ACTION**

### **2.1 Warning letter**

Where the amounts requested under the Reminder and Final Notice are not paid or the account remains in arrears, and no contact or payment arrangement been maintained with the enforcement agent, debtors may receive notice in writing, which will be sent to their last known address, that the Council is considering further legal action. These warning letters will include:

- clear warning of the actions being considered, their likely cost and the seriousness of their consequences
- a request that the debtor contact the Council to try and make an arrangement to pay the debt and information as to the consequences of failing to respond
- the date by which they must respond
- a recommendation that they seek debt advice from a local non-profit advice agency and details of how they can be contacted.

### **2.2 Factors to take into consideration**

When considering further recovery action, the Council will investigate the circumstances of the debtor and consider:

- impact of non-payment and the need to deliver services to the community
- equality between those who do pay and those who don't
- why other recovery methods are not appropriate
- whether action is likely to be effective
- the potential debt that may be recovered by the action and whether the likely costs of the action are proportionate to it
- whether the debtor's failure to pay may result from a vulnerability or disability and, if so, what action is appropriate as a result
- the potential effect of the action on any known dependants
- the need to prevent homelessness and whether the action may cause it
- any other circumstances which may warrant protection from the consequences of the action.

An investigation into a debtor's circumstances will include:

- an attempt to contact the debtor in person, including a home visit if necessary
- data about the debtor shared by other areas of the Council including but not limited to Benefits, Income Services, and Electoral Registration
- data about the debtor shared by other public bodies as permitted by the Data Protection Act 1998.

Written records of the above will be kept with:

- details of attempts to contact the debtor
- the information gathered, consideration of whether the action is proportionate to the likely debt to be recovered and the reasons for proceeding with the action

## **3 COUNTY COURT JUDGEMENTS**

Where it is deemed appropriate to do so and the debt remains unpaid and no payment arrangement has been made or maintained to pay the outstanding debt, the Council may apply to the court to obtain a county court judgement (CCJ) against the debtor.

A county court judgement gives the Council certain powers to enforce the unpaid debt.



Once a CCJ is granted for sundry debts we can:

- ask for financial information, including employment and employer details
- take money directly from wages using an attachment of earnings order
- seek a charging order against property
- start bankruptcy proceedings

The County Court may instruct civil enforcement agents to collect the debt on the Council's behalf and add their fees. In the case of commercial rent debts civil enforcement agents appointed by the Court may uplift goods to the value of the debt and costs.

A county court judgement and the actions outlined may have serious consequences for the debtor and they will therefore always be considered on a case by case basis, taking individual circumstances into account. Other legal actions outside of this procedure may also be considered where appropriate, such as forcing the sale of a property if this is deemed a necessary and proportionate action and which may be considered for empty properties or where more than one property is owned.

### **3.1 Attachment of earnings for sundry debts**

Where the Council has been given a debtor's employment details, we may issue an order to the debtor's employers to make deductions from their earnings. Employers are legally required to comply with the order. The amount that can be deducted is set by the county court after consideration has been given to the debtor's income and expenditure.

A letter confirming the amount to be deducted will be sent to the debtor and to the employer when the order is issued. Where we are considering issuing more than one order, the most recent debt takes first priority. More than one attachment of earnings can be applied at any one time.

If an attachment will not clear the debt in a reasonable time or if it is otherwise considered inappropriate, then the Council will consider another recovery action.

An attachment to earnings will only be cancelled in exceptional circumstances. In cases where a debtor claims hardship because of an attachment, the individual circumstances will be considered in deciding whether to cancel the attachment. The Council will require evidence of any claimed hardship. This will usually include evidence that they cannot afford to pay for essential expenses such as their housing costs, utilities or food.

### **3.2 Enforcement agent action**

The Court may appoint an enforcement agent to recover the sundry debt on the Council's behalf.

Enforcement agents will issue a notice of enforcement and add statutory enforcement fees to the debt after a County Court Judgment has been granted by the Court.

Once a debt is referred to civil enforcement agents, any payments made either to them or directly to the Council will be applied in accordance with the Taking Control of Goods (Fees) Regulations 2014. If a debt has been passed to civil enforcement agents and payment is made directly to the Council without including the civil enforcement agent's fees; then the civil enforcement agent will pro rata the payment between debt and fees in strict accordance with regulations.

The debtor will be encouraged to repay the sums due or the enforcement agents may levy distress on goods owned by the debtor to satisfy the amount outstanding. If civil enforcement agents do not receive payment, cannot identify sufficient goods to clear the debt or cannot gain lawful entry to the property then they will send a certificate to the Council to confirm this position. Other courses of recovery action in this procedure will then be considered.

The Council will ensure as far as possible that the information, the civil enforcement agent holds is up to date and accurate. Enforcement agents are expected to operate in a fair and consistent manner and are subject to regular review based on collection, performance and conduct. Civil enforcement agents are also required to follow the Council's Code of Conduct.

The Council will only consider withdrawing a debt from civil enforcement agents in exceptional circumstances, for example, when a person is or may be vulnerable. However, vulnerability itself does not stop use of civil enforcement agents, although an identified vulnerability will be taken into consideration when making any contact or agreement with the customer. Requests for withdrawal are considered on a case-by-case basis and the decision made will be based on individual circumstances. Any cases that are identified as vulnerable will be dealt with by the enforcement agent's specialist vulnerability/welfare team.

### **3.3 Bankruptcy**

Where the debtor is an individual, the Council can apply to the County Court or High Court for them to be made bankrupt if the sundry debt is more than £5,000.00.

This course of action is costly and can have a considerable impact on debtors and members of their household. Before taking this action, the Council will therefore make reasonable attempts to investigate the taxpayer's personal and financial circumstances to determine whether bankruptcy action is appropriate.

The Council is more likely to pursue this action where:

- the debtor has previously broken agreed payment arrangements
- from the information the Council holds they appear to likely have sufficient realisable assets to pay the debt and likely costs
- the likely costs are proportionate to the debt to be recovered
- the taxpayer and members of their household are not vulnerable
- all other enforcement remedies have been exhausted.

A statutory demand will first be served on the debtor setting out the debt outstanding, and the options available to them to prevent further action, the time scales in which they need to respond and direct contact details of officers dealing with the case. A guide to the potential bankruptcy costs is included with the statutory demand. No additional costs are incurred at this stage, and the Council may still agree a payment arrangement with the debtor at this stage.

Where the debtor has not responded to the statutory demand within 21 days or where the Council is unable to agree arrangements that will discharge the debt; the Council will consider whether a petition for the debtor to be made bankrupt should be made to a court.

Where new information is received which suggests that the debtor or other members of the household may be vulnerable, consideration will be given regarding whether this action is still appropriate.

Where a bankruptcy order is made, and a debtor has assets that might be sold to settle a debt, a licensed insolvency practitioner will be appointed by the Court as a trustee to safeguard and secure the assets of the debtor. The costs associated with this type of action are high, typically running into several thousands of pounds, which are paid by the debtor.

### **3.4 Charging orders**

The Council may apply to the County Court or High Court for a charge to be put onto a property owned by the debtor. The Council is more likely to apply for a charging order against a property that is either fully or jointly owned by a debtor where:

- the debtor has previously broken agreed payment arrangements
- the debtor has failed to provide employment or benefit details
- no contact can be made with the debtor

The Council will usually contact the debtor again to try and settle the matter without the need for legal proceedings. Legal proceedings will commence if no agreement is reached.

Where new information is received by the Council which suggests that the taxpayer or other members of the household may be vulnerable, then consideration will be given as to whether this action is still appropriate.

The costs associated with this type of action are high, and will be added to the amount of the order. Where a charging order is granted, other methods of recovery may continue to be used to collect the debt.

The Council may also apply to the court for an order for sale, which may result in the property being sold and the amount subject to the charging order, including costs, being paid from the proceeds of sale. The Council is more likely to apply for an order for sale where the debtor owns more than one property, there is likely sufficient equity in the property to pay the debt and costs and the likely costs are proportionate to the debt owed.

## **PART THREE – ADULT SOCIAL CARE DEBTS**

## **1 RECOVERY PROCEDURE**

### **1.1 Deferred Payment Arrangements**

This method of recovery is only available in respect of adults social care debts relating to residential care in accordance with the Care Act 2014.

A Deferred Payment Arrangement is a binding legal agreement between the Council and the customer to defer part of the payment of the adult social care debt in exchange for a legal charge to be placed on the property, where eligibility criteria is met. A contribution is made towards monthly costs and the debt is settled when the property is sold. Compound interest is charged on the debt at a rate which is set nationally. Such arrangements can be made by anyone in receipt of residential care services at any point in time.

To be eligible for a deferred payment, a client must meet the three criteria detailed below:

- (a) A client must have needs that are to be met by the provision of care in a care home. This is determined when someone is assessed as having eligible needs which the Council decides should be met through a care home placement. This will comply with Choice of Accommodation Regulations and care and support planning guidance and so take reasonable account of a person's preferences;
- (b) A client must have less than (or equal to) £23,250 in assets excluding the value of their home (i.e. in savings and other non-housing assets); and
- (c) A client's home is not otherwise disregarded, for example it is not occupied by a spouse or dependent relative as defined in regulations on charging for care and support (i.e. someone whose home is taken into account in the local authority financial assessment and so might need to be sold).

### **1.2 Invoice issue**

If a Deferred Payment Arrangement is not in place, then an invoice for monies owed to the Council for care fees or charges or community alarms is sent to the customer at the point that it is established that money is owed to the Council. This may be at the beginning of the financial year, or at any point within the year. The invoice will detail the amount due, and due date of any instalments. The invoice is also known as a sundry debt invoice.

If there are any changes to an account which alters the amount of money due to the Council, then a further adjustment notice will be sent to the customer. This informs the customer of any changes to the amount or date of payment due.

If there is no right to pay by instalments, then the full amount on the invoice must be paid as detailed on the invoice. Where appropriate an invoice will be raised before the service is provided.

The invoice may be addressed to the customer's representative where they have the authority to act on the customers behalf, for example Power of Attorney for Property and Welfare.

### **1.3 Reminder and Final Notice**

If a customer does not pay an instalment by the due date, then a Reminder notice will be issued. The customer must pay the amount requested on the Reminder notice generally within 20 days.

If the account is not brought up to date in accordance with the Reminder notice issued, then a Final Notice will be issued to the debtor 20 days after the payment was due to be paid in accordance with the Reminder notice. If the debt remains unpaid then further recovery actions are considered.

## **2 FURTHER RECOVERY ACTIONS**

The Council may consider whether other courses of action are appropriate to recover adult social care debts after the issue of Reminder and Final Notices where the debt remains unpaid. This may include further contact or visit by the Council to determine the particular circumstances of the customer to determine if they are in hospital or recently moved into residential care or has diminishing capacity and / or contact with others who may be acting on the customer's behalf. Such contacts may include social workers, the Office of the Public Guardian or investigations into financial abuse or mismanagement of a service users monies should this be necessary to establish the reasons for non-payment. Infrequently the Council may have to pursue the debt in other ways and seek legal action as outlined in this Policy document in Part Two – Sundry Debts Recovery.

## **PART FOUR – HOUSING BENEFIT OVERPAYMENTS**

### **1 RECOVERY PROCEDURE PRIOR TO LEGAL ACTION**

#### **1.1 Invoice issue**

An invoice for monies owed to the Council for overpaid Housing Benefit is sent to the customer at the point that the overpayment is identified. This may be at the beginning of the financial year, or at any point within the year. The invoice will detail the date and the amount due.

If there are any changes to the amount of Housing Benefit payable and this alters the amount of money due to the Council, then a further invoice will be sent to the customer. This informs the customer of any changes to the amount and the date the payment is due.

Where entitlement to Housing Benefit continues, or is reinstated, then any overpayment of Housing Benefit should be recovered from ongoing benefit as the appropriate rate.

#### **1.2 Reminder and Final Notice**

If a customer does not pay an instalment by the due date, then a Reminder notice will be issued. The customer must pay the amount requested on the Reminder notice generally within 14 days.

If the account is not brought up to date in accordance with the Reminder notice issued, then a Final Notice will be issued to the debtor. The Final Notice requests payment within 7 days.

#### **1.3 Arrangements**

Debts should be recovered as quickly and cost effectively as possible without causing undue financial hardship to debtors. Recovery of overpaid Housing Benefit is sought by negotiation with the debtor.

Where customers are experiencing severe financial hardship then income and expenditure information will be requested to enable a reasonable payment plan to be agreed. Only the essential expenditure is deducted from total income.

#### **1.4 Further Recovery - Attachments**

Where the amounts requested under the Reminder and Final Notice are not paid or the account remains in arrears, and no arrangement has been agreed, then after 14 days of the Final Notice being issued further recovery action will commence.

A letter is issued where no contact has been made and a balance remains outstanding to advise that contact must be made within 14 days of the date of the letter otherwise appropriate recovery action will be taken. Income details will be sought from the Department of Work and Pensions computer system, searchlight. If the customer is in receipt of one of the following benefits, an attachment of benefit can be applied;

Income Support (IS)

Attendance Allowance (AA)

Job Seekers Allowance (JSA)

Employment and Support Allowance (ESA)

Disability Living Allowance (DLA)

Incapacity Benefit (IB)  
Industrial Death Benefit (IDB)  
Carers Allowance (CA)  
Maternity Allowance (MA)  
State Retirement Pension (SRP)  
Severe Disablement Allowance (SDA)  
Pension Credit (PC)  
Bereavement Benefits (BB)  
Bereavement Allowances (BA)  
Personal Independence Payments (PIP)  
Universal Credit (UC)

Only one attachment to a non-Universal Credit benefit will be made.

The Benefit Service can recover overpaid Housing Benefit direct from a customer's earnings without the need for a Court Order, this is known as a Direct Earnings Attachment (DEA).

The Social Security (Overpayments and Recovery) Regulations 2013 introduced Direct Earnings Attachments (DEAs). This allows Local Authorities to recover overpayments of Housing Benefit using a Direct Earnings Attachment.

The standard DEA rates are detailed in Appendix Two of this policy.

## **1.5 Enforcement Agents**

Where no contact has been made or payment arrangement agreed or maintained, and benefit or earning details have not been provided then the debt will be passed to the Council's civil enforcement agents. The debtor is able to make an acceptable payment arrangement with the enforcement agent without incurring any enforcement agent fees.

The Council will ensure as far as possible that the information the civil enforcement agent holds is up to date and accurate. Enforcement agents are expected to operate in a fair and consistent manner and are subject to regular review based on collection, performance and conduct. Civil enforcement agents are also required to follow the Council's Code of Conduct.

The Council will only consider withdrawing a debt from civil enforcement agents in exceptional circumstances, for example, when a person is or may be vulnerable. However, vulnerability itself does not stop use of civil enforcement agents, although an identified vulnerability will be taken into consideration when making any contact or agreement with the customer. Requests for withdrawal are considered on a case-by-case basis and the decision made will be based on individual circumstances. Any cases that are identified as vulnerable will be dealt with by the enforcement agent's specialist vulnerability/welfare team.

## **GENERAL MATTERS**

### **Payment Arrangements**

At all stages, the Council will usually encourage and give customers, the opportunity to make individual arrangements to pay their debt.

The Council will expect an arrangement that clears the debt within the current financial year, which runs 01 April to 31 March. The Council will only consider arrangements beyond these parameters on an exceptional basis. Arrangements will also be assessed on affordability and to make this assessment the Council may require customers to provide full details and documentary evidence of their income, expenditure and savings. We may refuse to make an arrangement if a debtor's current employment and benefit details are not supplied where applicable.

It is the responsibility of the customer to ensure that their arrangement payments reach the Council on time. If any arrangement payments are missed or late, the Council may proceed with further recovery action immediately. A customer should contact the Council straightaway if they have difficulty keeping to an arrangement to discuss the matter.

Acting in accordance with this procedure will help to ensure that the collection of sums due is conducted in a consistent and objective manner; that will reduce the risk of inadvertent discrimination against persons with protected equality characteristics.

### **Advice agencies**

We recognise that a person who fails to pay a debt to the Council often has wider financial difficulties. We therefore provide information on how to contact a non-profit advice agency as appropriate in addition to providing information on how to apply for benefits, exemptions and discounts. The Council also recognises the importance of the work of non-profit advice agencies and endeavours to work in partnership with them on individual cases.

### **Debt**

Where a person has significant debts which are included in a legal debt relief order, individual voluntary arrangement order, breathing space scheme, or bankruptcy order the Council will not recover any amounts included in the order as the law requires for the time period specified by the order. Debts which are irrecoverable in accordance with legislation according to debt type will be written off. All other debts will be recovered except in cases where the debt exceeds 6 years old, and it is considered that all forms of recovery are exhausted.

### **Vulnerability**

The recovery of debts from those are receiving care and support is sensitive given potentially vulnerable nature of the individuals and the Council's responsibility to meet needs.

The Council also recognises that certain groups of people may be especially vulnerable, temporarily or permanent, and require additional assistance in dealing with their financial affairs, this may include people who are disabled, have a mental impairment or learning difficulty, experiencing serious illness, recently bereaved, very elderly and those who have difficulty in reading or writing.



Each case will be considered individually, taking into account all relevant factors and the where a person is identified as vulnerable the person may be allowed longer to pay, be advised to claim benefits, discounts or other entitlements, be referred to sources of independent advice, be given a temporary payment arrangement with a lower repayment.

It is important to note that being vulnerable does not mean that the person will not be required to pay the Council Tax owed. In determining this procedure consideration has been given to the Council's statutory equality duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.

## **Data**

The Council will collect and store personal data for the purposes of the effective billing, collection and recovery of debts. Personal data retained for this purpose will be processed in accordance with the Data Protection Act and General Data Protection Regulations (GDPR) 2018. Personal data may be shared with other public bodies, agents or contractors appointed by the Council for the recovery of debts as permitted by law and data will be stored securely at all times. The privacy notice link provides further information on this [Exchequer-Services-Privacy-Notice.pdf \(tameside.gov.uk\)](#)

Personal data may be used in accordance with law enforcement purposes. The term 'law enforcement purposes' relates to the prevention, investigation, detection or prosecution of criminal offences, or the execution of criminal penalties and which includes benefit fraud. Personal data will be used to ensure that benefits, discounts and exemptions are correctly awarded.

## **Enforcement Agents**

The Council employs externally contracted civil enforcement agents who must act in accordance with the Councils Code of Practice at all times. The contractor must ensure and monitor that its employees and agents comply with the Code of Practice at all times and ensure that taking control of goods is carried out in a fair manner and in accordance with the Council's requirements.

## **Complaints**

While the Council's objective is to provide an excellent level of service we recognise that things sometimes can go wrong. When it comes to an officer's attention that a customer is dissatisfied or that there is an error on an account, they should where possible address the dissatisfaction and correct any error immediately and remove the need for the taxpayer to seek redress through a complaint or appeal.

If a customer is unhappy with the service they have received they can at any stage lodge a complaint. All complaints will dealt with as per the Council's complaints procedure and can be found on the Council's website at: [Complaints to Tameside Council and the Councils complaints procedure and general complaints information](#)

## DEBT RECOVERY POLICY

### COSTS

### APPENDIX ONE

<b>Summons costs set locally and reviewed annually</b>	
<b>Council tax</b>	<b>£86 per summons</b>
<b>Business rates</b>	<b>£129 per summons</b>

<b>Monthly Attachment of Earnings set by central government</b>	
<b>Net earnings</b>	<b>Deduction rate %</b>
Not exceeding £300	0
Exceeding £300 but not exceeding £550	3
Exceeding £550 but not exceeding £740	5
Exceeding £740 but not exceeding £900	7
Exceeding £900 but not exceeding £1,420	12
Exceeding £1,420 but not exceeding £2,020	17
Exceeding £2,020	17 in respect of the first £2,020 and 50% in respect of the remainder

#### **Attachment of Benefit Deductions set by central government**

The current rate of deduction is £4.25 increasing to £4.55 from 01April 2024

#### **Enforcement Agent Fees set by central government**

<b>Fee</b>	<b>Cost</b>	<b>Information</b>
Compliance fee	£75	Initial contact by the Enforcement Agent to the debtor to urge contact to discuss a payment arrangement.
Enforcement fee	£235	The Enforcement Agent fee for attending the property. Plus 7.5% of the value of the original debt that exceeds £1500
Removal and Disposal Stage Fee	£110	This fee reflects the uplift and disposal of goods to the value of the debt. Plus 7.5% of the value of the original debt that exceeds £1500

**DEBT RECOVERY POLICY  
DIRECT EARNINGS ATTACHMENTS**

**APPENDIX TWO**

<b>Employee's weekly pay (£)</b>	<b>Employee's monthly pay (£)</b>	<b>Deductions from earnings</b>
100.00 or less	430.00 or less	Nothing to deduct
100.01 to 160.00	430.01 to 690.00	3%
160.01 to 220.00	690.01 to 950.00	5%
220.01 to 270.00	950.01 to 1,160.00	7%
270.01 to 375.00	1,160.01 to 1,615.00	11%
375.01 to 520.00	1,615.01 to 2,240.00	15%
More than 520.00	More than 2,240.00	20%

<b>VERSION CONTROL</b>		
<b>Version</b>	<b>Date</b>	<b>Lead Officer</b>
<b>Version 1</b>	<b>January 2022</b>	<b>Ilys Cookson</b>
<b>Version 1.1 amendments</b>	<b>February 2024</b>	<b>Ilys Cookson</b>