

Income & Collection Financial Procedures

September 2023



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Version Control

V1	Approved by Group Head of Revenues & Benefits	1/9/2023

1. Introduction

We are required to collect money from residents and businesses for a variety of reasons. We are fully committed to ensuring that all aspects of the income, collection and recovery processes are delivered in the most efficient and effective ways, to the highest standards of customer care and having regard to the individual needs of customers and the interests of taxpayers.

The money that we collect enables us to provide important public services. Income that is not collected or that takes additional effort to collect means fewer resources are available to provide our services. We will try to recover all debts owed to us. This is a fair approach to people who use services and to the majority who pay their liabilities to us on time. We will follow enforcement protocols and procedures to recover monies owed to us and signpost those people genuinely experiencing financial hardship to appropriate advice and support teams in the council or voluntary and community sector.

It is important that we set out how we manage and collect debts to ensure consistency and best practice in such situations. This document sets out the procedures we will follow, in our billing and collection of income due to us in respect of:

- Council Tax
- Non-Domestic Rates (Business Rates)
- Business Improvement District Levy (BID)
- Housing Benefit Overpayments
- Other sundry debts for services provided including Adult Social Care

There are separate procedures relating to the collection of income generated by rents, service charges and other income for Housing Revenue Account homes, garages and other assets, and temporary accommodation charges.

2. Statement of principles

Our approach to income and collection hinges on the following guiding principles:

- We will treat all customers fairly - with courtesy, respect and sensitivity.
- We will issue a prompt, correct bill / invoice that is understandable and easy to pay (in advance where possible), without making it easy to avoid payment.
- We will promote regular Direct Debit payments and other regular payment schemes that ensure all amounts due are collected in the year due.
- We will attempt to contact the customer as early as possible after a payment is missed to, where possible, avoid formal recovery action.
- When a payment(s) is missed, we will take proportionate and transparent action and consider the total indebtedness to ensure a fair arrangement is reached.
- We will undertake affordability assessments that ensure that any customer experiencing legitimate difficulty can agree a flexible payment arrangement.
- We will ensure that those customers who attempt to avoid paying without legitimate reason are pursued using all legal means.

- We will provide clear advice and signpost to sources of independent advice.
- We will, where appropriate, recover all costs incurred by the Council in recovering debts.

3. Vulnerable persons

We recognise that certain groups of people may be especially vulnerable and require additional assistance in dealing with their financial affairs.

The key factor in determining whether a person should be regarded as vulnerable is whether the circumstances they are experiencing are affecting their ability to deal with their financial affairs.

Where a person is or may be vulnerable we will give consideration to:

- Allowing longer to pay
- Postponing recovery action
- Assisting the person to claim benefits, discounts or other entitlements
- Referring the person to sources of independent advice
- Providing information in an accessible format
- A temporary payment arrangement with a lower repayment than would normally be agreed, or
- Other action as appropriate to avoid the vulnerable person being at a disadvantage as compared to a non-vulnerable person.

It is important to note that being vulnerable does not mean that the person will not be required to pay the money owed to the Council.

4. Accessing advice and support

We are committed to ensuring that where appropriate, liability is reduced by the correct award of reductions and discounts etc. For individual customers we will ensure that all available allowances, discounts, rebates and relief's are granted in appropriate cases at the earliest possible time in order to ensure the liability is correct.

We will make all reasonable attempts at all stages of recovery to identify customers who may be entitled to claim benefit or other reductions. Customers will be encouraged and assisted to make appropriate applications.

Where appropriate we will recommend to customers that they should contact independent advisors (such as the Citizens Advice Bureau, if the customer is an individual) where it is believed that advice in debt management is appropriate. Only in exceptional cases will we commit to suspend action whilst such advice is sought.

Where joint and several liability exists, we will make all reasonable attempts to identify and bill all liable parties. We will undertake recovery action against all liable parties with a view to recovering from any liable party which has the greatest ability to pay.

5. Prioritising payment of debt

Some customers will owe more than one debt to us, and may be on a low income or experiencing financial hardship. In such cases, it needs to be clear which debts we consider a priority.

Priority will be given to debts where non-payment could lead to loss of the customer's home or imprisonment and to ones that involve an accruing liability. These relate to Council Tax and Housing Rents, which are most commonly enforced through the courts in accordance with statutory requirements.

Other debts owed to us may, depending on the circumstances, be considered to be of lower priority.

6. Confidential information

We will ensure that all computer systems used to bill, recover and enforce debt meet statutory requirements including the General Data Protection Regulation (GDPR).

Staff involved in the recovery and enforcement of debt will have received appropriate training in the handling of personal information.

To be successful and ensure consistency, subject to any limitations imposed by legislation, it will be necessary to establish good working practices and develop information sharing protocols. This means that access to customers' information contained on different systems will be made available to key staff in order that a customer's total debt can be established and properly dealt with. Details of the Council's Privacy notice can be found at www.milton-keynes.gov.uk/privacy

7. Write off

Every effort will be made to recover the debt as set out in these financial procedures before write-off is considered. Service Areas will work together, sharing data, to make informed decisions about debt recovery and write off.

Writing off irrecoverable items represents good financial management. It allows staff to concentrate on recoverable debts and ensures that the level of debtors / arrears within the accounts is accurate and represents a true and fair reflection of the Council's financial position.

It must be noted that a debt may be written off but can be reinstated if deemed recoverable at a future date and is appropriate to do so.

The council will make all reasonable efforts to discuss the matter with the individual or organisation with a liability to pay the Council during the course of all debt recovery activity and consider the impact of debt recovery and its appropriateness. This includes sending reminder letters, contacting customers/ businesses by phone and email, performing tracing activities, cross-referencing other internal databases (e.g., housing, parking control, register of electors, etc.).

Only where all available and appropriate recovery action has failed, is a debt regarded as irrecoverable. Examples of where a debt may be considered irrecoverable are given below. This list is not definitive nor exhaustive as the individual circumstances of each case will be carefully and fully considered before a decision is reached.

- Insolvency - Debtor is the subject of bankruptcy, individual voluntary arrangement, liquidation, company voluntary arrangement & administration order or administrative receivership proceedings or has ceased to trade or is subject to a Debt Relief Order.
- Unenforceable - Certain debts will fall outside of legal jurisdiction either because the debtor is overseas, or six years may have passed since recovery action had been instigated against a debtor and the debt was last acknowledged.
- Absconded - Tracing action has failed to find the debtor
- Uneconomical to Collect - where the balance of the debt is such that the cost of recovering debt is not economical viable
- Deceased - The Debtor is deceased, and the estate is insolvent or unable to cover the debt
- Uncollectable - The debt is deemed uncollectable; examples of this may be
 - The debt is currently unenforceable due to the Debtor serving a custodial sentence
 - The debt has been remitted by order of the Court
 - The Debtor has been identified by the Council as vulnerable and this is impacting their ability to pay their debt
 - The debt arose from a local authority error that the Debtor could not reasonably have been aware of
 - The Debtor is likely to suffer serious financial difficulty as a result of recovery
- Recovery exhausted - All available and appropriate recovery action has been exhausted

In cases where the debtor is jointly and severally liable for the debt with another party, recovery action will continue against all liable individuals and only if this action fails, will monies be recommended for write off.

Once the decision is made that a debt is no longer recoverable the write-off will be authorised in accordance with the Council's agreed scheme of delegation.

Appendix A

Council Tax, Business Rates and Business Improvement District Levy

1. Introduction

Council Tax is a tax levied on all eligible domestic dwellings. Business Rates (non-domestic rates) are a tax levied on eligible business properties. Business Improvement District Levy (BID) is levied on certain properties within a defined BID area. Collection of the BID follows the same process as for Business rates set out below.

We will attempt to distinguish between those who have genuine difficulty in paying their debts and those who are deliberately withholding, delaying or giving false evidence in respect of payment of debt. All taxpayers will be given the opportunity to make suitable arrangements to pay and any further recovery action will only be taken after such an arrangement has either failed or the customer has failed to engage in making one.

2. Bills

We will issue demands (bills and revised bills), where necessary, as early as possible.

For current year liability, all taxpayers are entitled to statutory monthly instalments, but will lose this right if payments are not made in accordance with the statutory instalment scheme. Whilst monthly instalments are the only statutory method of payment frequency we will consider any reasonable method of payment within the instalment period, subject to compatibility with our IT systems.

3. Missed Payments - Reminders

We will issue reminders within one calendar month of an instalment being missed in accordance with the regulations.

We will ask the taxpayer to pay the missed instalment within seven days of the date on the notice. If the missed instalment is received within seven days we will not take any further action.

If it is not paid, then the right to pay by instalments is lost and the remaining balance 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 in due course.

Council Tax only - If the instalment is received within seven days, but another instalment is not paid, then we will send a second reminder notice. If the missed instalment is received within seven days, we will not take any further action. If it is not, then the right to pay by instalments is lost and the remaining council tax 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 in due course.

Council Tax only - If the account is brought up to date but falls behind for a third time, we will send a final notice for the full outstanding amount for the tax year, 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.

4. Summons

Where taxpayers fail to respond to any reminder notice or final notice or defaults on an arrangement to pay following either, we 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 with 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.

If a taxpayer pays the amount of the summons including the summons costs prior to the court hearing, then the application will not proceed and we will not obtain a liability order. If a taxpayer 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 for the issue of the liability order.

Any time after a summons is issued we will still 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 arrangement no further action will be taken.

If we decide that a summons has been issued incorrectly then it will be withdrawn and no costs will be charged.

5. Liability Order

A taxpayer has a right to attend a hearing and a right to give evidence as to why a liability order should not be granted. If they do not attend, the hearing will still proceed in their absence.

If the Magistrates are satisfied that the debt is payable and remains unpaid, then they are required to issue a liability order.

If a taxpayer 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:

- is unable to pay
- has recently applied for council tax reduction
- has applied to the Valuation Office Agency against their council tax band/rateable value
- has appealed their liability to the Valuation Tribunal (Council Tax only)

At the hearing, if the court is satisfied that the charge is legally payable and remains unpaid, the Magistrates are required to issue a Liability Order, together with an order for reasonable costs.

Summons and liability order costs will be added to a taxpayer's account and will be included as part of their debt. Costs reflect both the administrative cost to the Council and the court fees incurred. Therefore, costs will only be removed from an account in exceptional circumstances including, for example, where a summons or liability order was incorrectly issued.

Where a summons was issued because a taxpayer did not provide necessary information to the Council in a timely manner they will still be expected to pay costs. Also, where a taxpayer pays the unpaid council tax/business rates due, but does not pay the costs owed these will still be pursued as a debt using the actions set out below.

Where it is deemed appropriate, we will send a notice to the taxpayer when a Liability Order has been granted by the Magistrates' Court.

For Council Tax, this notice will include the statutory requirement for information regarding the taxpayer's financial circumstances and employment, so that arrangements to recover the debt may be made from earnings or certain DWP Benefits as appropriate.

In addition to the statutory requirement for financial information, this notice will also give a warning of possible further recovery action and will encourage engagement with us to resolve the debt.

6. Enforcement of Liability Orders

6.1. Overriding Aims

Our aim is always to collect any outstanding Council Tax, Business Rates & BID as efficiently and effectively as possible and will base any discretion as to methods of enforcement on this overriding aim.

This aim will be balanced with ensuring that customer's individual circumstances, where known to us, are considered.

The previous conduct of a customer in relation to previous adherence to arrangements, previous indebtedness and experience of the recovery process will be taken into consideration when exercising discretion.

The regulations only allow for one method of enforcement to be taken at any one time in relation to a single Liability Order. An exception to this is that if a debt is being recovered by deductions from DWP benefit then any recovery action on any other Council Tax debts cannot be undertaken whilst the deductions continue.

We will always undertake what is considered to be the most effective method of recovery for each individual case and will not prioritise methods of enforcement based on anything other than the individual circumstances of the case.

6.2 Arrangements

At all stages, we will usually encourage and give taxpayers the opportunity to make individual arrangements to pay their debt. Once agreed, an arrangement will always be confirmed in writing to the taxpayer.

Arrangements will also be assessed on affordability and sustainability. To make this assessment we may require taxpayers to provide full details of their income, means and expenditure including evidence to support these details.

It is the responsibility of the taxpayer to ensure that their arrangement payments reach the Council on time. If any arrangement payments are missed or late we may proceed with further recovery action immediately and with no notice. A taxpayer should contact us straightaway if they have difficulty keeping to an arrangement to discuss the matter.

6.3 Attachment of Earnings (Council Tax)

If the details of the taxpayer's employment are known and an Attachment of Earnings Order is considered appropriate, we will make an Attachment of Earnings Order and serve it on the taxpayer's employer.

The sums to be deducted are prescribed in the regulations and employers have a statutory obligation to comply with an Order.

An employer may deduct £1.00 towards administrative costs on each occasion a deduction is made.

Where the taxpayer has two or more unpaid liability orders we may request a maximum of two Attachment of Earnings Orders be initiated.

Where alternative arrangements have been made but not adhered to, the recourse to enforce an Attachment of Earnings Order will be taken.

An attachment to earnings will only be cancelled in exceptional circumstances. In cases where a debtor claims they will suffer hardship because of an attachment, the individual circumstances will be considered in deciding whether to cancel the attachment. We 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.

6.4. Deductions from DWP Benefits (Council Tax)

Where appropriate we will apply to the Secretary of State for the Department for Works and Pensions for deductions from Jobseeker Allowance, Income Support, Pension Credit (guaranteed) and Universal Credit.

The Secretary of State will determine the amount of the deduction in accordance with the relevant legislation (The Council Tax (Deductions from Income Support) Regulations 1993 (as amended)).

Given the restrictions in undertaking recovery action where a taxpayer has multiple debts and deductions from benefit are in place, consideration will be given to the value of the accumulated debts and the time scale for collection when determining the recoverability of the individual debts.

6.5. Civil Enforcement Agents (Council Tax & Business Rates)

This can be an invasive and expensive form of recovery for the debtor. For this reason, we will always prefer to pursue another recovery action first. However, if there has been no contact from the debtor, if no payment arrangement has been agreed or if the debtor has not provided us with employer or benefit details then the debt will usually be passed to our external civil enforcement agents.

Civil enforcement agents may make an acceptable arrangement with the debtor to repay the sums due or take control of goods owned by the debtor to satisfy the amount outstanding.

The fees charged by civil enforcement agents are prescribed by law. Once a debt is referred to civil enforcement agents, any payments made either to them or directly to the council will be applied to the agent's fees first before paying the Council's debt. 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.

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 us to confirm that no or insufficient goods could be found. Other actions in this procedure will then be considered.

We 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 judged 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.

6.6. Joint and Several Liability

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.

The recovery procedures may be applied to one or more than one of the joint taxpayers.

Different recovery proceedings cannot be applied to one taxpayer simultaneously with proceedings against another joint taxpayer for the same debt.

7. Further recovery actions

Where the actions in section 6 have been unsuccessful in recovering all of the debt owed or when they are considered inappropriate we may consider further recovery actions.

These include:

- charging orders
- bankruptcy
- committal to prison.

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. Staff will be issued with detailed guidance in relation to the selection and processing of cases (which may be amended from time to time), and these procedures will be mindful of vulnerability issues, equality issues and the requirements around balanced decisions, with each case being treated on its individual circumstances.

These methods are administratively costly, and therefore a full assessment will be made before allowing cases down this route.

7.1 Charging Order (Council Tax)

We 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.

We are 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 debtor is vulnerable or has a vulnerable person in their household.

Where a decision is made to proceed with an application for a charging order, the account will be referred to an appointed firm of external solicitors to apply for the charging order. We 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.

7.2 Bankruptcy and Liquidation (Council Tax and Business Rates)

Any amounts due can be deemed to be debts for the purposes of the Insolvency Act 1986 in relation to winding up limited companies or to petition for the bankruptcy of individual.

We will generally, only consider bankruptcy after other recovery methods have failed. However, we will choose it sooner if information is received that suggests that by initiating bankruptcy proceedings, this be a more effective method of collection.

We will make all reasonable efforts to ascertain if there are assets available prior to making a petition for bankruptcy or insolvency.

Insolvency proceedings will only be considered where the overall debt is over £5,000. The debt may be made up of debts other than Council Tax and NNDR.

In most cases (but not all), before commencing with insolvency proceedings, at least some of the debts will have been passed to Enforcement Agents in an attempt to take control of goods.

Where a decision is made to proceed with an application for bankruptcy or liquidation, the account will be referred to an appointed firm of external solicitors to administer the case.

7.3. Committal Proceedings (Council Tax & Business Rates)

Where Enforcement Agents have attempted to take control of goods and (for whatever reason) have been unsuccessful, we have the power to apply for committal to prison where the Taxpayer is an individual. This requires attendance at the Magistrates Court to enable a means enquiry to be conducted to see whether failure to pay is due to 'wilful refusal' or 'culpable neglect'.

We will only use this as a last resort. There will be many attempts to make arrangements and prompt payment, before reaching this stage, but in some cases there is no alternative.

In the majority of cases where committal action is taken, there will have been a complete lack of engagement or persistent refusal / avoidance of payment and the Magistrates will be asked to impose a warrant committing the taxpayer to prison.

If the Magistrates decide that failure to pay was not due to wilful refusal or culpable neglect they have the power to remit all or part of the debt. However, they are only entitled to remit the debt on the basis of inability to pay. They are not entitled to both remit part of the debt and make an order on the same liability order.

If a term of imprisonment is served, there is no further means by which to recover the debt and it will be written off. Any part payment will reduce the term of imprisonment by the ratio of payment to the total amount of the debt.

Appendix B

Housing Benefit Overpayments

1. Introduction

We are committed to ensuring that our customers receive the benefits to which they are entitled. However, sometimes people receive too much benefit, because they do not tell us about changes in their circumstances, they provide incorrect/ late information or we make a mistake or are delayed in making a change.

This section explains how we will meet our statutory duty in relation to the creation, classification, notification, recovery and write off of benefit overpayments.

We recognise that each customer's personal circumstances are different, and this guidance takes this into account.

2. Statement of Objectives

We have a responsibility to protect the public purse for the benefit of all its residents.

- We will prevent and minimise the number and value of overpayments created
- We will calculate any overpayment correctly taking into account any underlying entitlement to benefit
- We will correctly notify the customer, and where relevant, the landlord, about the overpayment
- We will accurately classify overpayments in accordance with legislation
- We will exercise our discretion with regard to when an overpayment can be recovered and the person from whom recovery can be sought, reasonably and in accordance with guidelines, on an individual basis
- We will make every effort to recover all overpayments deemed to be recoverable in the most effective way possible
- Where an overpayment is created we will balance maximisation of recovery with prevention of undue financial hardship
- We will provide a variety of methods to enable customers to repay their overpayment in a way that suits them best.

3. Causes of an overpayment

An overpayment of benefit is any amount which has been paid but to which there is no entitlement. In most cases overpayments arise because:

- A customer does not inform us that there has been a change to their circumstances until after the event or not at all – these overpayments are classified as 'customer error' overpayments;

- A customer or landlord has knowingly claimed or falsified a claim to obtain benefit and they have been convicted of the offence; or have admitted the offence under caution; or have agreed to an Administration Penalty – these overpayments are classified as ‘fraud’ overpayments;
- A mistake has been made by the Local Authority, the Benefits Agency or the Employment Service – these overpayments are classified as ‘official error’ overpayments;
- We fail to act upon information about changes in circumstances before the customers next pay date but within a timely manner – these overpayments are classified as ‘Administrative Delay’
- We fail to act upon information about changes in circumstances in a timely manner – these overpayments are classified as ‘local authority official error’ overpayments.

4. Calculation of Overpayments

The amount of an overpayment and the period to which it relates will be calculated in accordance with the relevant Housing Tax Benefit Regulations. When calculating the overpayment we will take the following into account:

- Whether there are any un-cashed or un-issued rent allowance payments that can be offset to reduce the overall overpayment
- Whether the overall overpayment can be reduced through the application of the underlying entitlement provision, where applicable
- Whether the overpayment should be recovered and if so who to recover from
- If applicable, the reason for not recovering a recoverable overpayment

5. Recovery of Overpayments

5.1. Deciding whether an overpayment should be recovered

The Housing Benefit Regulations provide that all overpayments are recoverable except those that are caused by official error where the customer or person acting on their behalf or the person who received payment of the benefit did not cause or materially contribute to the mistake, act or omission and the customer or person acting on their behalf or the person who received payment of the benefit could not reasonably have been expected to realise that it was an overpayment when they received the payment or upon receipt of any notification relating to the payment.

‘Non recoverable’ Overpayments

In order for an overpayment to be deemed to be ‘non-recoverable’ we must consider:

- Whether the overpayment was caused or contributed to by an official error
- Whether the customer could not reasonably have been expected to know they were being overpaid

We will make these decisions in accordance with the Regulations and guidance issued by the Department for Work & Pensions, ‘non-recoverable’ overpayments are minimal.

Recoverable Overpayments

Almost all overpayments will be recoverable. Having established that an overpayment is recoverable we must decide whether to recover the overpayment or not. We will consider each case individually.

We will consider the following factors:

- The reason the overpayment occurred
- The responsibility for the overpayment
- The age and experience of the person from whom we intend to recover the overpayment
- Whether recovery will cause undue financial hardship or will have a detrimental effect on the customer and their family.
- The possibility of eviction
- The cost effectiveness of recovery

5.2. Deciding who to recover from

We will consider who it is fair and right to recover from. A recoverable overpayment may be recovered from the customer, their partner, the person to whom the payment was made (including the customer's landlord), or a person who misrepresented or failed to disclose a material fact that led to the overpayment.

The overpayment will not be recovered from a landlord, when the overpayment of Housing Benefit has arisen due to misrepresentation or failure to disclose a relevant fact by the customer or someone acting on their behalf such as an appointee or agent.

Where there is more than one party from whom the overpayment may be recovered we will take all relevant circumstances into consideration these include:

- Who caused the overpayment
For example, the overpayment may have come about through a customer's failure to declare their earnings promptly
- Each party's knowledge of the overpayment
For example a landlord may suspect a property is unoccupied but fail to take action to notify us.
- Whether each party could reasonably have expected to take action to prevent the overpayment.
For example, a landlord may continue to cash payments after a customer has quit his property.
- The likelihood of recovering the overpayment.
For example, if the customer's whereabouts are unknown the only option available to us is to recover the overpayment from the landlord

Deceased Persons

Overpayments of Housing Benefit may be recovered from the estate of a deceased person. Where recovery action is taken in the above circumstances we will deal with the matter with sensitivity.

Fraud Overpayments

In all cases where a fraud has led to the overpayment of Housing Benefit the Council will prioritise the recovery of the overpayment.

If the overpayment has been paid to another person and that person was responsible for alerting us to the fraud, we will not recover the overpayment from that person but will seek to recover the overpayment from the person who has committed the fraud.

Where an overpayment has occurred as a result of fraud, any deductions from ongoing benefit will be made at the maximum level (without reduction) except in very exceptional circumstances.

5.3. Methods of Recovery

We will recover Benefit overpayments as quickly as is practicable but we will not commence enforcement action until the statutory time limit for appeal has lapsed.

There are a number of different methods of recovering overpaid Housing Benefit. We will determine the most effective method of recovery for the overpayment taking into account the individual circumstances of the case.

We will recover the overpayment in one of the following ways:

- Accept full repayment of the overpaid Housing Benefit when offered.
- Where appropriate, using council rent account credits to offset Housing Benefit rent rebate overpayments
- Where appropriate, using Council Tax account credits to offset Housing Benefit overpayments.
- By deduction from ongoing entitlement to benefit.
 - The rate of recovery should be no more than the statutory maximum applicable to the person from whom the overpayment is to be recovered, unless agreed with the customer.
 - Where the legislation permits a higher rate of recovery for fraudulent overpayments this will be applied and will not be reduced.
 - Any request for a reduction in the amount of weekly recovery from entitlement made by the customer will be decided on the individual merits of the case.
- By recovery from 'blameless tenants'. Where an overpayment is recoverable from a landlord (or other third party) and Housing Benefit continues to be paid to that landlord, we will recover the overpayment by deducting some or all of any payments made to the landlord. Recovery may be made in this way even if the landlord is no longer receiving payment of benefit direct for the person in respect of whom the overpayment was made.
- By recovery from any arrears of benefit that become payable. Where we have delayed or withheld payment of benefit the recovery will be limited to the statutory maximum claw back rate for the number of weeks of benefit owing. Where we consider that using the total arrears to recover overpaid benefit would cause undue hardship recovery from arrears may be reduced.

- Where the customer has moved to another Local Authority area we may request that Authority to deduct the overpayment from the customers ongoing Housing Benefit.
- By making an application for deduction from other eligible Social Security benefits in payment to the customer
- By using a debt collection agency
- Sending an invoice when the customer is no longer in receipt of Housing Benefit

Unless an ongoing payment arrangement is in place, further overpayment recovery will be suspended where an appeal is lodged with the Appeals Service or where the customer has requested that recovery be suspended until the matter has been concluded, providing the appeal relates to the overpayment.

- Where a customer's employment details are known to the Council we can serve a Direct Earning Attachment notice on their employer to make deductions from their earnings to clear the outstanding Housing Benefit overpayment in accordance with Social Security (Overpayments and Recovery) Regulations 2013. There is no requirement under these regulations for the Council to obtain a court order before serving such a notice.

Where recovery by any of the above methods has been unsuccessful we will consider registering the debt at County Court. This enables us to enforce the debt and use recovery methods that would not be available to us without a County Court Order (CCO) such as:

- Means enquiry
- Court bailiff action
- Charging order
- Attachment of earnings
- Third Party Debt Orders

We may reconsider the method of recovery of an overpayment at any time where it is considered appropriate to do so.

5.4. Unsuccessful recovery of an overpayment

Every effort will be made to recover all sums due to us, but there will be some circumstances when we will be unsuccessful in recovering a recoverable overpayment and we will write-off the debt.

Appendix C

Sundry Debt Collection

1. Statement of Objective

This section covers all debts due to us where an invoice has been issued in respect of a service or goods received.

Our objective is to recover all collectable debt owed to the Council and we will support our objective by:

- Promoting ownership of debts by service providers
- Ensuring whenever possible that collection of the fee or charge involved takes place prior to the service being provided so that credit is only given when essential to do so
- Ensuring invoicing procedures are carried out on an accurate and timely basis
- Requiring that evidence to support the invoice exists in the form of an official purchase order or other written agreement
- Encouraging customers to pay promptly
- Making collection and recovery activity more efficient by close monitoring of the payment of large invoices.

2. Payment terms

Unless otherwise specified in a contract or other formal notice, all sundry debts will be payable within 30 days of invoice date.

3. Payment methods

We will make it as easy as possible for customers to pay their accounts by making available a broad range of payment methods. Direct Debit will be promoted for the payment of recurring invoices but other methods of payment will be freely available.

4. Disputes

Disputes and queries relating to invoices issued by us will be investigated and, where practicable, resolved within 30 days of receipt.

5. Payment plans

Where appropriate, as an alternative to other recovery action, customers may be permitted to settle their accounts through a series of monthly instalments.

6. Late Payment and Interest Charges

Where a commercial customer is late making payment we may apply a late payment charge and interest in accordance with The Late Payment of Commercial Debts (Interest) Act 1998, as amended.

7. Recovery Action for Unpaid Invoices

If an invoice is unpaid after the due date for payment, we will send a reminder notice requiring payment within 7 days. Failure to pay following this notice will result in a 2nd reminder being issued after a further 7 days. If the invoice still remains unpaid then the following action may be taken:

7.1 Debt collection agencies

Where it has not been possible to obtain payment of an invoice we may refer the debt to the Council's approved Debt Collection Agency for recovery action.

7.2 Legal action

Where normal collection routines have failed to extract payment, we will consider referring a debt for legal action. Before commencing legal proceedings a letter before action will be issued to the customer. The proceedings will be managed through either our internal Legal Services team or an approved external law firm.

8. Write offs

We will make all reasonable and diligent efforts to recover all outstanding debt but where recovery is unsuccessful irrecoverable debts will be considered for write off in accordance with the Council's Financial Regulations.

9. Income and debts relating to specific service areas

9.1. Commercial property

Our commercial tenants will be billed for rent and service charges in accordance with the terms of their leases – typically quarterly in advance. Generally, insurance charges will be invoiced annually in advance.

Our approach to the collection of commercial property debts will be governed by the specific lease terms in place, allied to relevant legislation and this guidance document.

Where normal collection measures are unsuccessful, we may instruct the Council's approved Enforcement Officers to effect recovery on our behalf. In the case of commercial rent collection, we do not need to obtain a court judgment prior to instructing Enforcement Agents.

9.2. Parking Penalty Charge Notices

Our Parking team follows an agreed procedure for the issue and payment of Penalty Charge Notices. Details may be found in the Milton Keynes Parking Policy available at Parking tickets <https://www.milton-keynes.gov.uk/parking/parking-tickets-penalty-charge-notice>. Once a debt has been registered with the Traffic Enforcement Centre (TEC) it may be passed to the Council's approved Enforcement Agents for collection.

Appendix D

Adult Social Care Charges

1. Introduction

The Care Act 2014 introduced a modern legal framework for the recovery of any debts that may have accrued as a result of a local authority meeting a person's eligible care and support needs. Powers are provided under Section 69 of the Care Act that provides equal protection to both the local authority and the person. Section 70 of the Care Act also provides a local authority with the power to recover charges from a third party where a person has transferred assets to them in order to avoid paying charges for care and support.

2. Principles of Collection, Recovery and Enforcement

We aim to maximise our income collection to ensure that we can continue to provide important public services. To support this aim we will maintain a robust and fair approach to the collection and recovery of Social Care Charges.

Due to the potential vulnerability and frailty of the customers of the adult social care service we will ensure that we review the appropriateness of each recovery option based on what we know about the customer's circumstances, their ability to pay, their past payment history, their mental capacity or any other physical health or age related limitations and the requirement to recover outstanding monies in a timely and efficient manner.

We shall take special care when pursuing debts relating to particularly vulnerable customers; we shall seek to involve a responsible third party who can act for the customer in the customer's best interests, and check the customer consents to the arrangements.

3. Recovery Action for Unpaid Invoices

We have a timetable for recovery action which is set with the aim of ensuring that income is maximised to enable the Authority to provide services to the public of Milton Keynes.

If an invoice is unpaid after the due date for payment we will send a reminder notice requiring payment within 7 days. Failure to pay following this notice will result in a 2nd reminder being issued after a further 7 days. If the invoice still remains unpaid then we will take further action to recover the debt.

3.1 Arrangement for Payment

Arrangements will generally only be agreed where the customer pays an amount equal to their current weekly charge, plus an affordable amount in respect of any arrears. This ensures that the customer is able to maintain their payments and prevent their overall indebtedness from increasing.

In certain circumstances a lower temporary short-term arrangement may be made, for example where a future event or change (such as the sale of a property) will mean that the customer will be able to meet their liabilities in full following that event or change.

When making an arrangement we will have proper consideration for a customer's circumstances and wherever possible assist the customer in reaching a sustainable and manageable position with regard to the payment of the debts owed to the Council.

We will always try to resolve debt problems at the earliest opportunity, taking prompt and appropriate action to avoid the customer's indebtedness increasing.

3.2 Deferred Payment Arrangements

A Deferred Payment Agreement (DPA) is a process by which an adult does not need to sell their home to pay for their care in a residential or nursing home during their lifetime but can 'defer' or delay paying some of the costs of their care and support. The deferred amount will become payable either on the death of the customer or if the property against which the debt is secured is sold, whichever event is the earlier.

An application for a Deferred Payment can be made where an adult is about to enter a residential or nursing home or when they are already resident in a care home or who are living in extra care housing or supported living and possibly own an additional property (other than the property they are living in).

3.2.1 We must offer a Deferred Payment to adults who either have Council-arranged care and support or who arrange and pay for their own if they meet all three of the following criteria at the point of applying for a Deferred Payment:

- Adults who are assessed as having eligible needs which the local authority decides should be met through a care home placement.
- Adults who have less than, or equal to, the upper funding threshold (published annually by Department of Health) in assets, excluding the value of their home (i.e. in savings and other non-housing assets).
- Adults whose home is not disregarded.

3.2.2 We can, at our discretion, also offer Deferred Payment Agreements to adults who do not meet the above criteria where:

- meeting care costs would leave an adult with very few accessible assets.
- an adult has no other accessible means to help them meet the cost of their care and support.
- if an adult is narrowly not entitled to a Deferred Payment but is likely to meet the criteria in the near future.
- care and support is provided in supported living accommodation.

3.2.3 We may refuse a Deferred Payment Agreement despite an adult meeting the eligibility criteria where:

- the Council is unable to secure a first charge on their property.
- an adult is seeking a Top Up, although in these situations the Council should still seek to offer a Deferred Payment Agreement but should determine a maximum amount that is sustainable (or reflects their care costs without any Top-Ups) and agree a deferral. The person can then choose whether they wish to apply.
- where an adult does not agree to the terms and conditions of the agreement.

All Deferred payment arrangements are administered by the our Financial Assessment team and the deferred amount is not considered a recoverable debt until the arrangement ends, either 90 days after the death of the customer or the sale of the property.

3.3 Diminishing or lack of mental capacity

Where a person has an attorney for property and financial affairs or a deputy appointed we will expect them to consider and engage with any debt recovery on behalf of the person.

There may be cases where a customer has a less formal arrangement with friends or family to support and assist them in care planning and with their financial affairs and we will, where possible, seek to involve them in managing any payment arrangements .

Where the person lacking capacity has no attorney or deputy and has substantial debts, then an application for a deputy is required. The application has to be made to the Court of Protection. Where there are family involved with the person, they may make the application to become a deputy or where there are no family members the Council may apply for deputyship. We will refer any cases where we believe the Council should make a deputyship application to the Social Care team.

3.4 Referral to Safeguarding Adults Team

In some arrears cases, concerns may arise that the individual acting as financial agent and responsible for paying the charges on behalf of the customer is not administering the finances appropriately, in cases such as this it will be appropriate to refer the case to Safeguarding Adults Team as potential financial abuse.

Each arrears case will be considered on an individual basis before a referral is made; only when it has been clearly established that the financial agent has the ability to pay, but is refusing to cooperate with all our attempts to enforce this will a referral be made.

3.5 Deprivation of Assets

Where we identify that a person has transferred an asset to a third party to avoid paying care and support charges we will seek to recover the difference between what would have been charged and what was actually charged from the third party.

3.6 Recovery from Executors

When we are notified that a customer had died and there remains an unpaid debt, we will contact the executors or next of kin to advise them of the outstanding invoice(s). If there is no Deferred Payment Arrangement in place but there are assets in the estate, we will seek to recover the outstanding debt from the estate and may consider legal action under The Administration of Estates Act 1925 should the debt not be settled from a solvent estate.

4. Alternative to Legal Proceedings

Prior to commencing legal action we may, in appropriate cases, consider:

- Negotiating an agreement
- Mediation
- Arbitration

5. Decision to Commence Legal Proceedings

Legal action may only be commenced if a person has refused a Deferred Payment Arrangement or if they fail to meet the eligibility criteria and have failed to engage with us regarding repayment of the outstanding debt. Before commencing legal proceedings, the customer will, if applicable, be given further opportunity to enter into a Deferred Payment Arrangement.

A County Court Judgment gives the Council various powers of recovery. We will choose the appropriate recovery option based on what we know about the customer's circumstances, their ability to pay, their past payment history, their capacity to litigate, any physical health or age-related limitations and the requirement to recover outstanding monies in a timely and efficient manner.

The decision to commence legal proceedings for recovery of an unpaid debt will be discussed with the relevant Head of Service and will take due regard of our duty under the Care Act 2014 to promote a person's wellbeing.

Where the decision is made that legal proceedings are not appropriate, given the individual circumstances of the customer, the debt will be submitted for write off in accordance with the Council's Financial Regulations.

5.1 Mental Capacity Act 2005

Where a decision is made to commence legal proceedings, consideration should be given to whether the customer has mental capacity for litigation purposes. The Mental Capacity Act provides a framework for assessing a person's mental capacity and determining their best interests if they lack capacity to make a decision.

Where a customer lacks mental capacity to conduct or defend the litigation on their own behalf then an application will be made to the court to appoint a litigation friend.

5.2 County Court Order

Once the decision to commence legal proceedings has been approved, we will make an application for a County Court Judgment. Once the judgment is made, we will use the most efficient and effective means to recover the money outstanding.

The recovery options available are:

5.2.1 Warrant of Execution leading to Bailiff Action

We can ask the court to use bailiffs to collect the money and they will ask for payment within 7 days. If the debt isn't paid, the bailiff will visit the customer's home or business, to see if anything could be sold to pay the debt.

5.2.2 Attachments of Earnings

We can ask the court for an attachment of earnings order which is a method by which money will be stopped from a customer's wages to pay a debt. An attachment of Earnings will only be applied for if the defendant is in paid employment.

5.2.3 Bankruptcy

We can petition to the court for a bankruptcy order, in order that the customer's assets can be used to pay their debts. Bankruptcy may only be an appropriate method for enforcing recovery action for Adult Social Care in exceptional circumstances.

5.2.4 Third Party Debt Order to Freeze Assets/Bank Accounts

We can ask the court to freeze money in the customer's bank or building society account (or in a business account). The court will decide if money from the account can be used to pay the debt.

5.2.5 Charging Order on a customer's Land or Property

We can ask the court to charge the customer's land or property. If the land or property is sold, this charge will be paid before the proceeds of sale are distributed.

6. Write Off

We will only consider writing off debts where they are deemed to be uncollectable, e.g. in circumstances where we are unable to trace the customer, where they have passed away (although we will normally look to collect any outstanding amounts from the deceased's estate), if it is considered uneconomical to pursue the debt further or where the decision has been made that legal action is not appropriate. All write-offs will be made in accordance with the Council's Financial Regulations.