

Report for: Overview & Scrutiny

Title: Debt Recovery: Use of Bailiffs – Policy and Information

Report authorised by : Richard Grice – Director of Customers Transformation & Resources, Andy Briggs – Assistant Director of Corporate & Customer Services

Lead Officer: David Morris – Head of Corporate Debt

Ward(s) affected: All

**Report for Key/
Non Key Decision:** N/A Report for noting

1. **Introduction**

- 1.1 The enclosed report outlines Haringey Council's use of '*Enforcement Agents*' in relation to Debt Recovery activity across all of our service areas. Highlighting steps taken by Haringey Council, to reduce Court/ Enforcement Agent recovery action, in favour of payment negotiation, through financial assessment.
- 1.2 The impact of 'uncollected revenue owed to Haringey Council applies increased pressure on Council Budgets and Services to our residents. This report will take you through the 'Step by Step' approach our Services take with regards to the collection of monies owed and the consideration given, to ensure a fair and proportionate response is applied when recovering Council wide debt.

2. **Debt Recovery Principle/ Procedure (Invoiced Debt)**

- 2.1 The Corporate Debt Recovery Team, Homes for Haringey, Revenue Services and Parking are responsible for the timely collection of all outstanding Invoices/ Charges due to Haringey Council. The collection of this wide range of invoices is essential, as it allows the council to:
 - **Maximise Revenue collection**
 - **Minimise the risk of material loss**
 - **Enable the council to continue to provide the high level of service our residents require**
- 2.2 The recovery processes we follow cover all aspects of Haringey council's invoiced debt collection activity. The strategy we follow incorporates the strategic aims that the council and its partners use in collecting all Sundry Debtor invoices, as well as the '*Best Practice*' standards that we champion when resolving customers queries/complaints.
- 2.3 We strive to bring together key aspects of Enforcement activity, including compliance, multiple debtor knowledge and debt collection management.

- 2.4 Whilst Services such as Council Tax, Business Rates, Housing Rents, Leaseholders and Commercial Rents work to specific legislation with regards to how a charge should be collected, they also follow the same recovery principles and procedures as the 'Corporate Debt Team', when assessing customers' ability to pay.
- 2.5 These universal principles/ procedures cover the requirement to complete financial assessments, should a resident confirm they are unable to pay and also the appropriate action to take when vulnerability has been identified.
- 2.6 Haringey Council have a responsibility to ensure that action taken at the later stages of the recovery process are proportionate, reasonable and appropriate with regards to the outstanding Invoiced charge.

2. Debt Recovery Principle/ Procedure (Invoiced Debt) cont.

- 2.7 Please see the Recovery workflow attachment (Appendix A) that has been provided, detailing the Step by Step recovery process, with regards to Corporate Debt Collection.

I have listed below the recovery summary stages: -

- **Pre-Formal Recovery Action:** - Billing Stage, Soft Recovery (Invoiced Debt over **£10000+** & HBOP Over **£5000+**)
- **Stage 1 Debt Recovery:** - Final Notice Stage: - 28 Day Recovery Period
- **Stage 2 Debt Recovery:** - Pre-Action Protocol: Paralegal Process: 60 Day Recovery Period
- **Stage 3 Debt Recovery:** Team Leader/ Manager: Decision to be made on Legal Referral
- **Legal Enforcement:** All outstanding Corporate debts over **£500+** that have successfully gone through the 'Pre-Action Protocol' process, will be referred to Haringey Legal or Wilkin Chapman to proceed with proportionate and appropriate recovery action subject to the value of the charge.
- **High Court Enforcement Officer:** Charges over **£600+** would be forwarded to a 'High Court Enforcement Officer', once a 'Writ of Control' has been awarded by the High Court.

3. Debt Recovery Council Tax (Overview)

- 3.1 Council Tax bills are issued annually in early March by Revenue Services in readiness for the 1st instalment which is due on 1st April. Approximately 110,000 bills are issued at this time of the year. The taxpayer generally has 10 months, running from April to January of the following year to pay their liability.
- 3.2 Residents do have an option to pay over twelve months, via the Councils preferred method of payment 'Direct Debit'. Customer contact needs to be

made upon receipt of the annual bill, so that the first Direct Debit instalment can be collected in April. Please note; as part of the Direct Debit agreement we are required to allow 14 days, grace before being able to collect the direct debit instalment from the bank. Direct debit also gives the taxpayer the flexibility of paying on either the 1st, 15th or 25th of the month.

- 3.3 The Council Tax Bill and Reminder notices are issued in accordance with Council Tax legislation. The legislation only allows for two Reminders each year to be issued where a taxpayer may have missed, paid short or not paid as billed.

4. Debt Recovery Council Tax (Summons)

- 4.1 If the resident does not pay the amount requested in the First Reminder, Second Reminder or Final Notice, within the days allowed (approximately 7 days), the Council in accordance with the legislation will apply to the Magistrates Court for a Summons to be issued, notifying them of a Liability Order hearing.
- 4.2 The summons will advise the resident the date the court will consider the application, and the amount the Council are seeking to recover, inclusive of Summons costs and Court fees.
- 4.3 As this action is taken in the Magistrates Court it will not affect the residents credit rating, unlike action taken in the County Court. If the balance outstanding on the summons, including the Summons costs are paid in full before the hearing, the Council will not obtain a Liability Order.
- 4.4 There are only eight valid defences against the council obtaining a Liability Order at the hearing:
- **the property is not listed with the Valuation Office Agency for the period Council Tax is being charged**
 - **the tax had not been properly set**
 - **the bill and subsequent recovery notices were not issued correctly**
 - **the amount demanded has been paid**
 - **more than six years have passed since the date the bill was issued**
 - **the billing authority was in breach of the duty to serve notices 'as soon as practicable' in the relevant year**
 - **the amount outstanding is for a penalty which is being appealed**
 - **bankruptcy or winding up proceedings have been initiated**

5. Debt Recovery Council Tax (Liability Order)

- 5.1 Once a Liability Order has been granted by the Magistrates, the Council has the following methods/remedies to collect the debt:
- 1. Summons Debt Payment Arrangement (SPAR)**
 - 2. Attachment of Earnings**
 - 3. Attachment of Benefit**

4. Use Enforcement Agents

5. Bankruptcy

6. Charging order

7. Committal to Prison

- 5.2 The Council is under no statutory obligation to enter into a payment arrangement, following the issuing of a Liability Order. All, of the recovery options detailed in paragraph 5.1 are open to the Council's discretion with regards to the collection of the charge.
- 5.2 However, following each Liability Order hearing, we issue a request for information which enables the taxpayer to put forward a proposal of payment. The information request form must be completed and returned, or contact made within 14 days of issue, to enable the Council to agree a suitable 'Summons Debt Payment Arrangement'.
- 5.3 If the information is not provided or a suitable payment arrangement cannot be agreed, alternative recovery methods are considered on a case by case basis, using automation where possible to identify the cases that are suitable for an Attachment to Benefit/ Earnings.
- 5.4 Automation is also used to identify accounts where the taxpayer has made or is making payment within a set period of days. These cases are reviewed based on the history and information held on the taxpayer's records.
- 5.5 Where we are unable to set up a 'Summons Debt Payment Arrangement', or an Attachment of Benefit/ Earnings, the debt would be considered for a referral to an Enforcement Agent to collect.
- 5.6 Subject to the Enforcement Agent being unable to collect the charge, the case would be referred to further Court Recovery action ie Bankruptcy, Charging Order, Committal to Prison. Please note; in accordance with the Ombudsman, the Council is expected to have referred the debt to an Enforcement Agent for collection prior to proceeding with more advanced forms of debt recovery.

6. Vulnerability

- 6.1 Haringey Council consider the needs of vulnerable residents. Vulnerable residents can be defined in the following groups listed below: -
- **Adults supported by Social Services**
 - **Asylum Seeker**
 - **Bereavement (Customer has had a recent death in their family)**
 - **Corporate Appointee**
 - **Disability**
 - **Learning Difficulty (including illiteracy)**
 - **Probation Service Involvement**
 - **Severely Mentally Impaired (SMI)**
 - **Substance Abuse**
 - **Safeguarding (Customer referred to Haringey Safeguarding)**
 - **Terminal illness**

- **Young adults (18-25 who have come through the Care system, but maybe no longer supported)**

- 6.2 Whilst these groups do not define all categories of vulnerability, they form a guideline for staff working within The Corporate Debt and the wider Council to identify vulnerability and determine the correct recovery action to take dependant on the customers circumstances.
- 6.3 Council Debt collection for vulnerable customers charges is always going to be a complex often difficult issue when determining the correct recovery treatment to adopt for the Local Authority. The Recovery treatment we choose should not only satisfy the Councils need to maximise income collection, but also balance this requirement with the financial/ health and wellbeing needs of our vulnerable client base.
- 6.4 All Haringey Recovery services will endeavour to ensure **all** residents who are identified with vulnerabilities are sign posted to the correct internal/ external help. The vulnerability sign posting process is completed alongside the work being carried out by internal Social Care (Safeguarding), Step Change, Civil Legal Advice, National Debt line, Advice UK, Christians Against Poverty and the Citizens Advice Bureau, Connected Communities and HFH.

7. Pre-Action Protocol (Paralegal Recovery)

- 7.1 From the 1 October 2017 new recovery rules came into force within the United Kingdom around the collection of Debt claims. The new rules are detailed within the 'Pre-Action Protocol for Debt Claims'.
- 7.2 The requirement to adhere to the Protocol applies to any business (including Sole Traders and Public Bodies) claiming payment of a debt from an **individual** (including a sole trader), where pre-existing legislation around the collection of a charge is not already in place

i.e. the protocol would not supersede Legislation with regards to the collection of Council Tax, Income Tax or VAT.

The Protocol does not apply to business-to business debts unless the debtor is a sole trader. However, as good practice we follow the principles of the protocol with regards to the collection of all invoiced debts owed to the Council, prior to Court Recovery action where superseding Legislation is not in place.

- 7.3 The actions taken by the Paralegal Officer with regards to the administration of the Protocol over a 60 Day Period are summarised below: -

- 1. Review Pre-Action Protocol Pro Forma**
- 2. Review statement of account**
- 3. Prepare customer bundle**
- 4. Review customer returned bundle**

5. Review Financial Assessment
6. Complete Vulnerability assessment (**Please note; vulnerability will be assessed and addressed when identified at any point during the 'PAP' process, it does not necessarily need to wait to be identified upon the return of the Customer Bundle**)
7. Refer case to Step Change or Citizens advise bureau, subject to vulnerability assessment
8. Set Pre-Action Protocol Arrangement
9. Refer case to Legal subject to non-return of customer bundle or if unable to agree adequate Pre-Action Protocol arrangement
10. Refer case back to Team Leader/ Manager to reassign to Officer for further debt recovery action to be pursued, should failings be identified with regards to the initial recovery action
 - i.e. Customer has been overcharged by service who has raised the original invoice. Following invoice dispute, charge has been amended and case could be referred to 'Stage 1 Debt Recovery'

7 Pre-Action Protocol (Paralegal Recovery) cont.

- 7.4 The purpose of the Protocol is to help with the early resolution of debt recovery and financial disputes, meaning that, ideally, fewer cases make it to court. The Protocol protects the Creditor from unnecessary loss of additional income via Court Recovery fees/ Business spend and it also protects the Debtor from an unnecessary stressful situation, therefore improving their personal health and wellbeing as well as resolving their debt issues prior to Court recovery action.
- 7.5 Haringey Council have therefore incorporated the new 'Pre-Action Protocol' paralegal process into our recovery strategy for Sundry Debt and Housing Benefit Overpayments, therefore greatly reducing the requirement for Court recovery action/ Enforcement Agents.
- 7.6 Detailed information with regards to the 'Protocol', can be found on the website www.justice.gov.uk.

8. Enforcement Agents – Use

- 8.1 In line with the Councils directive on '*Ethical Debt collection*' within the Borough Plan, Haringey Services have actively reduced the use of '*Enforcement Agents*', where there is an option to use an alternative appropriate recovery method. The use of '*Enforcement Agents*' in some circumstances is the correct appropriate procedure to follow, in line with the action being taken.

Example: -

- Long term non-payment of Commercial Rent charges would result in an eviction notice being served and an '*Enforcement Agent*' would be required by law to attend the property in order to enforce the eviction. This process would also be required with regards to HFH Rent arrears clients.
- Bankruptcy charges would require a '*Statute Demand*' to be served and in most cases (not all) would be served by hand through a registered '*Enforcement Agent/Legal Representative*'.
- Enforcement on a County Court Judgement via a '*High Court Enforcement Agent*', previously known as a '*Sheriff*'.
- Closure of a business due to non-payment of Licence Fee.
- Collection of Council Tax/Business Rates charges where wilful refusal has been identified. The payment of Council Tax and Business Rates is a Legal requirement and the non-payment of Council Tax is one of few charges that can result in a custodial sentence, the use of an '*Enforcement agent*' for the collection of these charges can therefore be justified, dependent upon the circumstances of the case.

8.2 **Sundry Debt**

The use of Enforcement Agents with regards to Invoiced Debt collection has been restricted to '***Court Recovery Action***' only. This action would only be taken once all other forms of debt recovery have been exhausted. Corporate Debt have also implemented a '***Pre-Action Protocol***' paralegal process. The purpose of the process is to help with the early resolution of debt recovery and financial disputes, meaning that, ideally, fewer cases make it to Court/ Enforcement Agent stage.

8.3 **HFH/ Commercial Rents**

As per 6.1 the use of '*Enforcement Agents*' in relation to rental arrears, would only be authorised with regards to eviction. For a customer to get to an eviction stage, a Court Order would need to be granted and all forms of previous recovery action would have failed

8.4 **Council Tax**

Revenue Services have implemented a more customer focussed approach to Council Tax arrears collection, since the production of their previous guidelines in 2014. This new approach focuses on resolving customer queries in house through greater customer engagement, increased volumes of financial assessments and closer working relationships with other debt service areas, highlighting vulnerability and risk at an earlier stage.

Enforcement collection within Council Tax represents approximately **£2Million** collection per annum to Haringey Council.

8.5 **Business Rates**

For the financial period 1 April 2018 – 31 March 2019, the Council issued **1173** Liability Orders of which **70%** were referred to the ‘*Enforcement Agent*’ for collection. The Business Rates Team do not take a softer approach to arrears collection, as the payment of Business Rates should be incorporated into the businesses operating costs

i.e. A business operating in the United Kingdom has a ‘**Legal obligation**’ to pay Corporation Tax/ VAT via HMRC, they should also be reasonably expected to build in the payment of Business Rates into their business operating model, as the payment of Business Rates is also ‘**Legal requirement**’.

The use of Enforcement Agents within the Business Rates service area is essential to ensure we can maintain a high level of collection, with the additional benefit of the ‘*Enforcement Agent*’ being able to provide accurate/valuable information in terms of ‘**actual**’ liability.

Unfortunately, we are not always informed of the correct occupants within our business units across the borough.

Business Rates legislation states that the person entitled to possession of a property is liable to pay business rates charges. The person entitled to possession will usually be the leaseholder or the owner of the property. However; in the case of an occupied property, the person or company occupying it is liable to pay the Non-Domestic Rates.

The ‘*Enforcement Agents*’ are therefore also acting in a visiting Officer capacity for the council, reporting on liability changes and underlining issues. This is most beneficial in cases where Liability Orders for payment have been served and alternative occupants to that of the registered liable party have been found as resident in the property, by the Enforcement Agent, when they have visited the property to take control of goods.

Please note; in some exceptional cases a discretion would be taken in order to assist small businesses, with regards to longer payment periods for outstanding arrears.

9 Enforcement Agent - Assurance

- 9.1 Referring Haringey debtor accounts to the Enforcement Agent, is always one of the last methods of recovery action we would choose to take as a Council. The additional costs placed against the outstanding charge does not help the debtor clear the charge any quicker and if the wrong case were referred, it could place a resident into a cycle of debt.
- 9.2 We must also consider the mental stress a visit from an Enforcement Agent can have on a resident. Recovery cases will therefore only be referred to Enforcement Agents once all other forms of debt recovery have been fully exhausted.

- 9.3 Haringey Council will only issue a debtor account to an '*Enforcement Agent*' once the following Court action has been taken: -
- Liability Order has been issued, following Court Summons notification
 - 'Writ of Control' has been awarded by High Court; case referred to High Court Enforcement Officer (HCEO)
 - Penalty Charge Notice (PCN) has been referred to the Traffic Enforcement Centre (TEC) and 'Order for Recovery' has been granted
 - Repossession Order awarded by High Court; case referred to High Court Enforcement Officer (HCEO)
- 9.4 Enforcement agents are normally employed by a private company and, as such, are not Officers of the Court, but they are certified by the court. The certification process enables the court to exercise a degree of control over the standards of competence and conduct of enforcement agents.
- 9.5 The enforcement agent certificate, granted by the County Court, authorises the enforcement agent to work anywhere in England and Wales. The certificate must be renewed every two years.
- 9.6 To qualify for a certificate, the applicant must satisfy the court that they are a "*fit and proper*" person to act as an enforcement agent. The applicant must prove that they have a sufficient knowledge of the law and procedure evidenced by Level 2 or equivalent Training in the Taking Control of Goods Regulations and provide a security bond.

9 Enforcement Agent – Assurance cont.

- 9.7 Certified Enforcement Agents enforce **non-High Court orders**, this includes non-payment of Council Tax, Business Rates, Parking and Traffic offences, fines from the Magistrates' Court's, non-payment of child support, or a failure to pay Commercial Rent (collection only, a High Court Enforcement would be required in order to serve a repossession order).
- 9.8 All of our Enforcement Agent partners are certified and registered with the '*Civil Enforcement Association*'.
- 9.9 Haringey Council services review Enforcement Agent performance and customer engagement on a periodic basis. Through joint working with our partners, we ensure the recovery of monies owed to the Council which supports the delivery of Council Services. We also ensure appropriate action is being taken once vulnerability or underlining issues have been identified by the Enforcement Agent and reported to the Council.

- 9.10 Debt cases relating to Council Tax and Business Rates are referred to the Enforcement Agents on a weekly basis. Once referred the Agent will correspond with the debtor, giving them 10 days to respond to the request to pay. Haringey Council have requested for our Enforcement Agents to extend this period to 21 days (Compliance), where the debtor has an opportunity to agree an arrangement away from 'Doorstep Recovery' ie email, telephone, in writing etc. The additional charge at this stage is **£75.00**.
- 9.11 During the 'Compliance' stage, where vulnerability has been identified, Enforcement Agents will signpost residents to 'Step Change', CAB, or Haringey Social Services through the service who has assigned the charge.
- 9.12 The '*Taking Control of Goods*' regulations has provided additional protection for the vulnerable. At times it is not until an Enforcement Agent visits a property that vulnerability is identified. When this occurs, the taxpayer is protected by the regulations in that the Enforcement Agent must refrain from the doorstep and carry out the collection of the debt by way of contact via telephone, email or text. In addition to this the fees for the '*Enforcement Visit*' must be withdrawn, despite the visit having been made.
- 9.13 Failure to respond to the Enforcement Agent during the 21 day 'Compliance' stage, would unfortunately result in a further **£235.00** in charges being added to the outstanding balance. However; if the charge owed is over **£1500.00** a further percentage of the overall debt can also be added, on top of the **£235.00**

10 Summary

- 10.1 Haringey Debt Recovery Teams are actively working with all customers across the Council with regards to monies owed. We are issuing automated Reminder and Final Notices, coupled with outbound calling, Pre-Action Protocol letters, Letter Before Action and advanced recovery proceedings.
- 10.2 Haringey Council are placing themselves in a strong position to combat the changing attitudes in society concerning debt and some customers becoming somewhat ambivalent to paying on time or at all.
- 10.3 The change in strategic approach from being reactive to pro-active, coupled with the joint working with our external partners, allows us to reflect these changing attitudes whilst maintaining a high level of consistency and fairness whilst conducting debt collection throughout Haringey.