

## COUNCIL TAX AND NON DOMESTIC RATES RECOVERY POLICY

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## **1. INTRODUCTION**

- 1.1 While an element of the Council's overall spending is supported by means of Scottish Government grant, Council Services are also funded through Council Tax and Non Domestic Rates which contributes to the range of essential services Scottish Borders Council provides.
- 1.2 Customers, citizens and businesses within the Scottish Borders have a responsibility to pay for the services they receive and the charges and taxes they are liable for.
- 1.3 Council Tax is payable in line with a statutory instalment scheme or by arrangement. There is a legal duty place on the Council and its Officers to collect outstanding debt in accordance with The Council Tax (Administration and Enforcement) (Scotland) Regulations 1992.
- 1.4 Non-Domestic Rates will be administered and collected using the guidance set out in the legislation as detailed in Local Government Scotland Act 1989.
- 1.3 It is essential that all monies due to the Council are actively pursued to minimise service disruption and maximise income collection.
- 1.4 The purpose of this document is to set out the general principles in doing so.

## **2. WHY WE NEED A POLICY**

- 2.1 It is essential for the Council to demonstrate that it carries out administration and recovery of Council Tax and Non-Domestic Rates debt efficiently, effectively, and fairly. By doing so the Council:
  - (i) provides Revenues for the Council;
  - (ii) deters fraud and error;
  - (iii) demonstrates commitment to accuracy;
  - (iv) demonstrates a provision of a quality service to customers.

## **3. AIMS AND OBJECTIVES**

- 3.1 The overall objective of the Council Tax and Non-Domestic Rates Recovery policy is to maximise income to the Council by ensuring that all billing, collection, and recovery action is undertaken in an effective and efficient manner in accordance with legislation.
- 3.2 There will be circumstances where some of our customers may be suffering hardship and need help and advice. The approach to debt recovery will therefore be sensitive to individual circumstances and take account of multiple debts owed.
- 3.3 The policy is intended primarily for Customer Advice and Support staff who are involved in this process.
- 3.4 The specific aims of this policy are:
  - (i) To ensure all customers pay in accordance with their bills or demand notices or by agreement in accordance with regulations
  - (ii) To ensure bills and demand notices are issued at the earliest opportunity in accordance with regulations
  - (iii) To take prompt action to reduce the risk of arrears escalating and becoming unmanageable to the customer
  - (iv) That the Council's approach to debts/arrears is fair and consistent for all customers
  - (v) To take appropriate action to recover outstanding monies
  - (vi) To recognise that failure to recover monies due impacts on the Council's ability to provide key services.
  - (vii) To recognise payers may have difficulties in paying and to offer alternative support.

## 4. SERVICE STANDARDS

4.1 A summary of Scottish Borders Council's service standards are set out below:

- (i) Have detailed procedures that are applied consistently across the service;
- (ii) Ensure staff are trained to enable them to carry out their roles effectively;
- (iii) Ensure a wide range of accessible payment methods are available;
- (iv) Provide advice and guidance to customers about claiming any reduction, discount, or exemption they may be entitled to allowing optimum income maximisation;
- (v) Ensure customers are aware of their responsibility to report any change in their circumstances;
- (vi) Ensure that customers are given the opportunity to agree an arrangement to repay arrears at a realistic amount and reflect the ability to pay as well as the level of debt owed;
- (vii) Signpost customers to money advice agencies as appropriate;
- (viii) Provide access to Council financial help when possible, during debt recovery discussions;
- (ix) Debtors will be offered, when required, a private interview with Customer Advice and Support Staff;
- (x) No debtor will be subject to discrimination;
- (xi) Generally, the minimum amount of an instalment following a payment arrangement would be equal to the amount which could be obtained by deductions from the customers DWP/SSS income.

## 5. PAYMENT OPTIONS

5.1 The Council recognises that the easier it is to pay, the more likely that payment will be made and the less likely that debts will accrue. Therefore, the Council is committed to providing a wide range of payment methods for its customers. These methods will offer flexibility through online, contact centre and face to face engagements while also promoting the Council's objective to operate accurately, consistently, and efficiently.

5.2 In order to minimise the cost of collection the Council will actively promote low-cost payment options such as Direct Debit. The following main methods of payment will, however, be offered/accepted:

- (i) [Direct Debit](#) (the preferred method)
- (ii) Online
- (iii) Automated payment line
- (iv) Assisted payment line
- (v) "Paypoint" facilities at shops and outlets across the Scottish Borders
- (vi) Standing Order
- (vii) Credit or Debit card at Contact Centres

5.3 Contact Centres do not take cash for payment of Council Tax or Non Domestic Rates, however, all bills and reminders have a printed barcode which can be taken to any Post Office or Paypoint outlet for payment.

All payments will be processed in accordance with the Council's [Income Management Policy](#).

5.4 Bills issued by the Council will be clear and wherever possible include a barcode to facilitate easy payment. Instalment plans and payment dates will be communicated clearly.

5.5 The Council will adopt best practice payment approaches to facilitate, authenticate and, where possible, automate payments from the customer to the relevant Council account.

5.6 Should customers encounter difficulties paying according to their bill, Advisers will spend more time with debtors giving them an opportunity to maximise their income and signpost for other assistance to reduce poverty. This includes (but is not limited to) :

- (i) Offering the customer to pay by direct debit over 12 months instead of 10 months;

- (ii) Offer Revised Instalment Plans (RIP's) to allow a more flexible payment schedule to suit the customers needs. RIP's must be paid by direct debit and must be clear by the end of the financial year;
- (iii) Check customers receive all income they are entitled to;
- (iv) Signposting for help with applications for benefit;
- (v) Referring the customer to their energy provider for support or to Home Energy Scotland for energy efficiency advice;
- (vi) Refer debtors to Citizens Advice for money advice.

## 6. RECOVERY OF COUNCIL TAX ARREARS

- 6.1 Council Tax is a levy charged on domestic properties based on the Council Tax band the property is in. The full amount is normally payable unless the owner or occupier is entitled to a reduction from Council Tax. The main reasons for reductions include empty property discounts, disregards, single occupancy discounts and discretionary awards e.g., against the increase charges for long term empty properties.
- 6.2 Council Tax is payable in line with a statutory instalment scheme or by agreement. There is a legal duty placed on the Council and its officers to collect outstanding debts in accordance with the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992.
- 6.3 Scottish Borders Council also has a duty to collect domestic water and waste water charges on behalf of Scottish Water which is included in the Council Tax demand notice.
- 6.4 Recovery is based on a staged escalation process in accordance with the relevant legislation.
- 6.5 The stages involved are:
- (i) A recovery timetable is drawn up at the beginning of each financial year
  - (ii) Demand notices, Reminder and/or Final notices are issued in accordance with the timetable and regulations
  - (iii) A Summary Warrant is issued by the Sheriff Court (see section 9)
  - (iv) Debt may be passed to the Sheriff Officer for diligence (see section 10)
- 6.6 If a debtor is in receipt of an appropriate qualifying benefit, Scottish Borders Council can make a request to the Department of Work and Pensions (DWP) or Social Security Scotland (SSS) for a Third-Party Deduction. (This is where the DWP/SSS deduct money from the debtors benefit and pay it to a creditor or supplier to clear a debt.)
- 6.7 Where a debtor holds a credit in another financial year or account that they are liable for, we will assess whether the credit should be offset against any arrears or monies owed to the Council.

## 7 JOINT AND SEVERAL LIABILITY

- 7.1 Joint and several liability means in law that all, or both the jointly liable parties are each responsible for the whole liability. As a result, the billing authority can recover the whole amount due from any or all parties and it is their responsibility to arrange their respective contributions between themselves. Where there is more than one person jointly responsible for paying Council Tax on a property:
- (i) One bill will be issued showing the name of all liable parties;
  - (ii) The Council can ask for payment from any of the liable parties;
  - (iii) If payment is not made, separate reminders and summonses will be issued to each of the liable parties;
  - (iv) Any of the people named on the bill can be held liable for the whole debt.

## **8. RECOVERY OF NON-DOMESTIC RATES**

- 8.1 Non-Domestic Rates (also called Business Rates) is a tax levied on eligible business properties based on their rateable value and the rate poundage which is set by Scottish Government. They are usually payable by the owner, tenant, or occupier of a non-domestic property. They are charged on most non-domestic and commercial properties, for example, shops, offices, factories etc. The amount payable may be reduced by Non Domestic Rates relief if the property, owner, or occupier is eligible.
- 8.2 Non-Domestic Rates are payable in line with a statutory instalment scheme or by agreement. There is a legal duty placed on the Council and its officers to collect outstanding debts in accordance with the Local Government (Scotland) Act 1989.
- 8.3 The Council will ensure that all billing, collection, and recovery action is undertaken in an effective and efficient manner in accordance with legislation.
- 8.4 The stages involved in this process are:
- (i) A recovery timetable is drawn up at the beginning of each financial year
  - (ii) Demand notices, Reminders and/or Final notices are issued in accordance with the timetable and regulations
  - (iii) A Summary Warrant is sought from the Sheriff Court (see section 9)
  - (iv) Debt may be passed to the Sheriff Officer for diligence (see section 10)
- 8.5 Where a debtor holds a credit in another financial year or account that they are liable for, we will assess whether the credit should be offset against any arrears or monies owed to the Council.

## **9. COUNCIL TAX AND NON-DOMESTIC RATES – SUMMARY WARRANT**

- 9.1 Once a Final Notice has been issued to the taxpayer and either:
- (i) Payment has not been made in accordance with the previously issued notices;
  - (ii) A payment arrangement has not been made; OR
  - (iii) A payment arrangement has been made but not upheld;
- 9.2 The Council can apply to the Sheriff Court for a Summary Warrant. Once granted it allows the application of a 10% Statutory Penalty to be added to the outstanding balance and permits further recovery by legal action called diligence (see point 10 for a more detailed explanation).
- 9.3 Once the Summary Warrant has been granted, Scottish Borders Council will pass accounts to their debt management company for collection. The debtor will be given the opportunity to make a suitable payment arrangement with the debt management contractor. Should the debtor not make, or keep to, a payment arrangement then further recovery action can be taken by the debt management contractor. Scottish Borders Council retains the right to offer payment arrangements to debtors.

## **10. DEBT ENFORCEMENT**

- 10.1 The different processes of debt enforcement which are available under Scottish Law are referred to as diligence. A person or organisation (the creditor) can use diligence if someone who owes them money (the debtor) has failed to pay a sum due.
- 10.2 Where appropriate, a debtor will be served with a Charge for Payment by a Sheriff Officer, prior to the execution of diligence, on behalf of the Council. The Council will utilise all forms of diligence including, but not limited to:

- (i) Earnings Arrestments – deductions are made from the debtor’s wages at a rate determined by legislation
- (ii) Bank Arrestments - placed on debtor’s bank account on any funds in excess of the statutory minimum
- (iii) Attachments - the Sheriff Officer will attach goods, value them for sale, and if the debt is not paid within a specified period the goods will be sold. An Exceptional Attachment applies to individuals, sole traders and partnerships and cannot be executed without an Order being granted in Court. If granted, an auction will take place to realise the value of goods attached (Applies to Non Domestic Rates only).
- (iv) Third party deduction - if a debtor is in receipt of an appropriate attachable benefit, Scottish Borders Council can make a request to the Department of Work and Pensions (DWP) or Social Security Scotland (SSS) for a Third-Party Deduction. (This is where the DWP/SSS deduct money from the debtors benefit and pay it to a creditor or supplier to clear a debt.) Deductions can only be made if there’s no other way to clear the debts without putting the welfare of the customer or their family at risk.
- (v) If the amount of arrears meets the statutory minimum requirement, the Council may petition for sequestration or liquidation (see section 11 below).
- (vi) The Council may arrange for an inhibition order to be placed on a property to prevent a debtor from disposing of the property before making payment of an outstanding debt.

## 11. SEQUESTRATION

- 11.1 Sequestration is often referred to as bankruptcy and applies to individuals and partnerships, but not companies. The assets and property of the debtor are transferred to a Trustee who administers the estate and is obliged to generate these assets into money and distribute the proceeds amongst the creditors.
- 11.2 An application for sequestration must be made to the court and if granted will last for one year after which the debtor will be discharged. If the debtor has not been cooperative, the trustee may ask for the court to defer the discharge.
- 11.3 Applying for sequestration:
  - (i) The debtor must owe over a specified amount before sequestration can be considered. There are specific guidelines and procedures to follow when considering a debtor for this recovery action.
  - (ii) A Petition for Sequestration is required to be presented and a Trustee is appointed to manage the process.
- 11.4 Once the debtor has been sequestrated any diligence currently in progress must end and no further diligence can be started in respect of that debt.
- 11.5 The Trustee will ask the Council for details of the outstanding debt as at the date of sequestration. Any new debt occurring from the date of sequestration can be pursued in the normal manner.
- 11.6 Where a debt is held jointly in more than one name, in the event of one of the jointly responsible parties being sequestrated, the other party will remain responsible for the full debt. In these circumstances the debt would not be written-off, albeit the sequestrated party will no longer be considered responsible for the debt and dependent on individual circumstances the other party will be pursued for payment of the residual debt.
- 11.7 In the event of the Council considering petitioning for sequestration it will be discussed and approved by the Service Director. This would only be likely where it is known that the debtor owns property and where there may some realisable equity following any sale of the property by the trustee. Consideration should also be given to the costs of such an action against the potential benefit to the Council.
- 11.8 There are alternatives to applying for Sequestration. Scottish Borders Council may accept other types of payment agreement such as:
  - (i) A Debt Arrangement Scheme (DAS)
  - (ii) A Trust Deed

## 11.9 Debt Arrangement Scheme (DAS)

- (i) This is a statutory debt payment scheme set up by the Scottish Government to provide those in debt with a means of paying off what they owe over a longer period of time without resorting to sequestration (bankruptcy).
- (ii) If they are successful in applying, they will make one regular payment to cover most of their debts. This is made to an approved payments distributor who will send the money to their creditors. If they keep to the agreed payments, their creditors will not be able to make them bankrupt or use diligence against them. This protection starts once they have made an application for a debt payment arrangement and are waiting for it to be approved. Joining a debt payment arrangement freezes interest, fees, and charges on their debts.

## 11.10 Trust Deed

- (i) This is effectively a formal repayment agreement set up between a debtor and their creditor which typically lasts for four years and will be set up according to how much they can afford to pay back. Once the Trust Deed is protected recovery action will stop.

## 12. LIQUIDATION, RECEIVERSHIP AND ADMINISTRATION

12.1 This form of insolvency applies to companies and is regulated by the Insolvency Act 1986.

12.2 Liquidation is the equivalent of sequestration for a company. A Liquidator is appointed to gather the company's assets to pay the creditors. The company will end as a going concern unless the directors can find the money from outwith the business to keep it trading.

12.3 An Administrative Order is designed to allow the company some breathing space from its creditors and allow the best course of action to be taken to resolve the situation. A formal proposal is put to the creditors, which may include the sale of assets. An Administrator is appointed to help trade the company out of its financial difficulties. It is an alternative to winding up and is used mainly by large companies where there is the prospect of something being saved for the creditors. It prevents the company from being wound up, securities being enforced, or new legal proceedings being actioned.

## 13. DEATH OF A DEBTOR

13.1 There can often be problems associated with the recovery of the debts of a deceased person as there may be no funds to settle the debt or an executor cannot be identified. All efforts will be taken to ensure that debts are paid from the estate wherever possible.

13.2 The role of an executor in winding up an estate (if the deceased person has not left a will, the court will appoint an executor), is to ascertain a valuation of the deceased person's debts and liabilities. Once this information has been obtained, they will have to apply to the court for confirmation of the estate, which when granted gives the executor the authority to realise the assets, such as bank accounts, by producing the confirmation certificate. It is the executor's duty to ensure that the debts of the deceased person are settled.

13.3 In some instances the assets can be transferred without confirmation: for example, if there are few assets and the value is low. This means that it is not always necessary to employ a solicitor to undertake the duties. There is no requirement for a formal valuation of household contents provided the estimate is genuine, but a professional valuation will be required for items such as a house.

13.4 For Council Tax purposes an exemption may apply following the death of a person if the tax would otherwise be met from the estate of that person. The exemption could apply for up to six months from the date of the Grant of Confirmation but will end sooner if the estate is settled and ownership, or the tenancy, of the property transferred. It should not be assumed however that the person residing in a property prior to their death would remain responsible after their death: for example, a person who has a life-rent in a property will be responsible for Council Tax as long as they are considered to be residing

in the property. Following their death, the ownership of the property is not in dispute and liability for the Council Tax would immediately transfer to the actual owner.

## **14. TRACING OF DEBTORS**

- 14.1 All amounts of unpaid debt will be pursued in accordance with the above policy. In the event of the debtor leaving their last known address without providing a forwarding address, the Council will use various methods of tracing the individual which may include external tracing agents and companies where the balance is over £100.

## **15. WRITE OFFS**

- 15.1 An integral part of debt recovery is the effective management of outstanding debts. The Council will normally consider debts owed as being recoverable however recognises that a small proportion of its overall income may not be collectable due to matters out with its control and will regularly identify and write off irrecoverable debts. This ensures the Council uses its resources in an efficient manner and supports strategic financial planning.
- 15.2 The Council will seek to minimise the cost of write offs by taking all appropriate action to recover what is due in line with consistent guidelines and procedures.
- 15.3 It is not possible to list every scenario that may make a debt suitable for write off, however, the Council will consider the specific circumstances of the debt and the debtor to ensure the Council's financial position is balanced considering factors such as anti-poverty issues, economic considerations, aged debt, and official error. Key write off categories include:
- (i) Customer has died and there are insufficient funds in the estate;
  - (ii) Customer cannot be traced;
  - (iii) Uneconomical to pursue the debt;
  - (iv) Income is uncollectable due to sequestration/insolvency;
  - (v) All recovery methods have been exhausted and it is clear that the amount due will not be recovered;
  - (vi) Legal action has been unsuccessful;
  - (vii) Not in the public's interest to pursue e.g. at risk and vulnerable service users;
  - (viii) If legislation allows us;
  - (ix) Other exceptional circumstances
- 15.4 There is a framework of consistent guidelines and procedures to follow once every practical recovery process has been exhausted, this includes a structure and scheme of authorisation which is tiered based on the amount to be written off. Where debts have been written off, if at a later date there is a prospect of payment, the debt will be reinstated to enable recovery action to re-commence.
- 15.5 The powers for writing off debts are contained within the Council's Financial Regulations and Scheme of Delegation. The Chief Financial Officer (CFO) has delegated authority to write off amounts up to £100k. Any potential write off greater than this must be approved by Council.
- 15.6 For practical reasons the CFO may delegate authority to the Director for Resilient Communities and other officers to approve individual write off amounts up to a pre-determined level as approved in the Scheme of Delegation.
- 15.7 A write off report giving summary details of the number of debts and amount to be written off by category will be submitted quarterly by the Chief Financial Officer to the Executive in accordance with the Financial Regulations.



## **16. PERFORMANCE MONITORING**

16.1 The Council recognises that prompt recovery action is essential for effective debt management. The Council will:

- (i) Monitor the level and age of its debt;
- (ii) Set clear targets for the recovery of debt;
- (iii) Have recovery procedures where required;
- (iv) Assess recovery methods to ensure maximum returns; and
- (v) Regularly review irrecoverable debts for write-off.

16.2 To ensure this policy achieves its objectives a range of indicators are monitored for performance against annual targets. Key indicators include:

- (i) In-year collection targets;
- (ii) Five year collection rate – rolling trend;
- (iii) Sheriff Officer's collection performance;
- (iv) Number of Council Tax changes outstanding;
- (v) Number of Non Domestic Rates changes outstanding;
- (vi) Council Tax third party deductions.

16.3 The Council recognises that failure to achieve income and collection targets will have financial and service consequences. Performance will be reviewed on a monthly basis by operational managers and this information will be reported as part of the Council's wider performance updates to Committee.

16.4 Where an external agency assists the Council's collection and recovery process it will also be required to produce detailed performance and management information.

## **17. EQUALITY AND DIVERSITY**

17.1 The Council will ensure that the provisions outlined within this policy are accessible to everyone and that customers are treated fairly and equally. The Council will:

- (i) Ensure that all relevant equality standards are being met;
- (ii) Ensure appropriate staff receive cultural awareness, disability discrimination and mental health awareness training;
- (iii) Communicate to customers using plain English and help customers whose first language is not English; and
- (iv) Ensure our documents and communications can be made available in different languages and formats.
- (v) Ensure all statutory financial, equality and diversity regulations are applied.

## **18. CONFIDENTIALITY**

18.1 The Council will ensure that all information about a customer's personal and/or financial circumstances is dealt with in the strictest confidence and in accordance with the Data Protection Act 2018 and any other statutory functions duties and responsibilities of the Council.

If you require a copy of this policy in another language, please contact CASS Development Team at [CASSDevelopmentTeam@scotborders.gov.uk](mailto:CASSDevelopmentTeam@scotborders.gov.uk)