

SCRUTINY ITEM INITIAL RESPONSE – DEBT COLLECTION PROCESS**1. Purpose**

- 1.1. To provide the Committee with information together with contextual review considerations relevant to the agreed scoping of this scrutiny item.

2. Background

- 2.1 The agreed description of this scrutiny item is –

A review of the Debt collection process and policy and the impact on residents

In the consideration of this item through the initial Member request and review process involving the Committee's Working Group, it was asserted that there were aspects of the way in which the process was operated which were impacted in a detrimental way on residents. Particular reference was made to the use of enforcement agents ("bailiffs") and the power regarding Attachment of Earnings Orders ("AoE"). It was further asserted that individual vulnerability was an issue not always properly taken into account.

- 2.2 The scoping of this scrutiny items in terms of the broad questions to be addressed have been agreed by the Committee as follows:

1. Is there a policy and is it being followed – processes involved.
2. Is this for Council Tax/Business Rates collection or other debts.
3. To what extent are bailiffs/AoE being used, and how successful is this in terms of debt recovery.
4. What revenue from enforcement has been collected by way of bailiffs and AoE
5. How and to what extent are vulnerability checks being made.
6. Is the MDC approach consistent with general local authority practice.
7. How and to what extent are the processes undertaken and practices being followed to the detriment of local residents.

3. Context

- 3.1 This scrutiny item is potentially quite wide since debts to the Council can arise in a number of service areas where fees, charges and demands are issued. Debt management and recovery is therefore a corporate issue and the relevant Council policy on this is indeed a corporate one. For the purposes of preparing the Committee for its further work on this item, the assumption has been made that the scrutiny will be confined to debts occurring in relation to Council Tax and Business Rates.
- 3.2 The information provided here to assist the Committee is based on fact in terms of the Council's corporate policy and an understanding at Officer level of how that policy together with any supporting procedures and processes are implemented. It will be for the Committee to consider whether the information provided satisfactorily deals with the questions listed above or whether more detailed scrutiny is required and plan for it accordingly.

4. Corporate Debt Recovery Strategy

- 4.1 This corporate policy was agreed by the former Finance and Corporate Services Committee in November 2018 and is due for review later this year when Members will have the opportunity for input. It will be open to this Committee to make any observations or recommendations it may wish to see taken into account.
- 4.2 The Strategy seeks to promote the efficient and effective collection of income due to the Council in line with its Corporate Objectives and desired high-level outcomes. It emphasises at the outset that strong and prompt inward cash flow has a direct impact on the Council's financial situation, enabling it to minimise reliance on financial reserves and maximise investment income, which in turn supports the overall budget and reduces the level of Council Tax required. The Strategy aims to enable the Council to be seen as an efficient, cost effective, fair and equitable organisation both in its dealings with external customers and its internal administration procedures. The Council strives to achieve high collection rates for all debts, and targets for the collection rates for the two main income streams – Council Tax and Business Rates – are set as part of the annual Business Planning process and are agreed by Members, with performance reports reviewed regularly by the Corporate Leadership Team and also Members. While stretching targets are set, the Strategy recognises that the Council has a duty of care to all customers, particularly the vulnerable. A balance has therefore to be struck between the importance of supporting vulnerable customers alongside increasing the Council's income.
- 4.3 Among the various stated aims of the Strategy the following are particularly relevant:
- Advise and assist customers to avoid debt issues before they arise
 - Make pro-active contact by email and telephone to ensure early intervention and payment
 - Provide payment options which are cost effective and support prompt
 - Payment
- 4.4 The Strategy makes specific reference at para 2.10 to the use of **External Collection Agencies** at where value for money can be demonstrated and subject to the Council's own procurement rules and with performance being monitored through a service level agreement. The Strategy also deals specifically with **Vulnerable Customers** – here is what it says at para 2.11 –

We recognise that some members of the community may be considered to be more vulnerable and therefore, may require additional support in dealing with their financial affairs. We at MDC will work alongside third sector organisations, adopting best practise and signposting customers for debt advice.

Vulnerability does not mean that a person will not be required to pay amounts they are legally obliged to pay. However, where a person is recognised to be vulnerable consideration should be given to;

- *Allowing longer to pay or breathing space,*
- *Postponing enforcement action,*
- *Assisting the person to maximise their income by claim benefits, discounts or other entitlements, or to review their financial position with a recognised*
- *partner such as the Citizens Advice Bureau,*
- *Providing information in an accessible format,*
- *Alleviate Poverty and prevent homelessness,*

- *Helping customers through personal crises, severe or exceptional circumstances and difficult life events,*
- *A temporary payment arrangement with lower repayment than would normally be agreed,*
- *Using the Council's Safeguarding processes to raise any concerns regarding the debtor's safety or welfare,*

The cause of vulnerability may be temporary or may be permanent in nature and the degree of vulnerability will vary widely. The following list will be used as a guideline for both MDC staff and their agents and identifies some of the characteristics of persons who could be considered vulnerable however each case must be taken on its own merits:

- **Disabled Persons** – *Where the disability affects the person's ability to deal with their financial affairs.*
- **Serious illness** - *Where the debtor or partner appears to be suffering from any condition which is serious or life threatening, including mental illness.*
- **Mental Impairment or Learning Difficulties** – *Where it is evident the debtor is suffering from mental impairment or learning difficulties.*
- **Persons in receipt of Benefits** – *If the debtor is in receipt of benefits or in serious financial difficulties due to loss of employment or is suddenly unable to meet their existing financial commitments.*
- **Language Barriers** – *Where a person does not understand spoken or written English.*
- **Age under 18** – *Anyone aged less than 18 years should automatically be considered to be vulnerable.*
- **Elderly Persons** – *Who are frail, confused and or ill and have limited income.*
- **Recently Bereaved** – *For example a bereavement of a close relative.*
- **Lone Parents** – *In particular those with very young children who find it difficult to take up employment and rely on welfare benefits.*
- **Late Stages of Pregnancy** – *Who may find dealing with serious financial issues stressful, particularly if they are not supported by a partner*
- **Difficulty reading and writing** – *They are likely to have difficulties*

5. The Recovery Process

5.1 The formal process for the recovery of a Council Tax debt begins with the seeking of a **Liability Order** from the Magistrates Court. The Court will grant an order if satisfied that an amount of Council Tax is outstanding. A **Liability Order** gives the Council further powers to enforce payment, the main options being -

- Deductions from earnings, benefits, or Members allowance (Council Tax only)
- Instruct an Enforcement Agent to take control of goods
- Bankruptcy/Winding up proceedings
- Charging Order (Council Tax Only)
- Committal to prison

5.2 Following the grant of a **Liability Order**, Officers will write to the Liable Person(s) confirming that such an Order has been granted and the amount payable. The letter will encourage the Liable Person to put forward a proposal for a payment arrangement, but before any offer can be considered a statutory "request for Information" form must be completed, providing details of the Liable Person's employer, expected earnings and any other income. This must be returned together

with a budget statement so that consideration can be given to the appropriateness of a payment arrangement or further enforcement action. Failure to comply with the request for information is a criminal offence and may result in prosecution.

Attachment of Earnings Order (AOE) - where a Liability Order has been granted, the Council can instruct an employer to make deductions from a Liable Person's salary under an. An Order will be served on the employer, with a copy sent to the Liable Person. The amount of the deduction will depend upon the person's net salary and based on percentage deductions within salary bands, details of which are contained in Schedule 4 to the Council Tax (Administration and Enforcement) Regulations 1992, a copy of which are included with the AOE when it is sent to the Employer.

Attachment of Benefits (Council Tax Only)

The Council may apply to the Department of Work and Pensions (DWP) to have deductions made from a debtor's Income Support, Guaranteed Pension Credit, Income Based Jobseekers Allowance, Employment Support Allowance and Universal Credit.

Attachment of Members Allowances (Council Tax Only)

Relates to Liability Orders granted against Elected Members of a billing or relevant precepting authority. Up to 40% can be deducted from the Members's allowances.

Enforcement Agents (Previously known as Bailiffs)

The Liability Order allows an Enforcement Agent to be instructed to recover an outstanding Council Tax or Business Rates debt and, where the debt is not paid, to remove goods to the value of the debt, known as "taking control of goods".

- 5.3 The Council has a formal agreement with Enforcement Agents to determine arrangements such as the hours they can call, the days they can attend, and that they will operate within the code of practice of The Enforcement Services Agency of England and Wales.
- 5.4 If an Enforcement Agent takes control of goods to the value of the debt, he can enter into a "Controlled Goods Agreement" under which he will allow the goods to remain with the debtor, whilst a payment arrangement is made. If a debtor fails to sign the agreement, or fails to maintain the payment arrangement, the Enforcement Agent is legally entitled to seize those goods.
- 5.5 The Strategy provides, and it is worth emphasising, that the Council **will only** instruct an Enforcement Agent where a debtor has been advised of the Liability Order and has been given an opportunity to make a payment arrangement. It follows that where a debtor fails to engage with the Council, or to provide the necessary financial information on which a payment arrangement could be based, it will not be possible properly to assess issues of vulnerability. The Council may therefore have no alternative but to progress with enforcement action with the use of agents, as a last option.
- 5.6 Whilst front line staff can discuss and propose payment arrangements with customers, any move to formal enforcement action will be only be dealt with and agreed by a small team of highly experienced debt recovery staff. This would include a review of the customer's account before deciding to invoke measures such as an Attachment of Earnings, or referral to an Enforcement Agent.

- 5.7 Staff will continue to be mindful of and sensitive towards issues of vulnerability and where necessary additional steps will be taken to provide a customer with the appropriate support. Where a customer has been identified as potentially vulnerable after formal enforcement action has been begun the various options as outlined in 4.4 above will still be applicable.

6. Debt relief and respite

- 6.1 It should be noted that the Council provides a range of reliefs under section 13A of the Local Government Finance Act 1992, including Council Tax Support. This is discretionary relief and not a statutory entitlement, and the full cost is borne by Council Tax payers generally. This provision therefore must be used carefully to ensure it is offering value for money for all Council Tax payers. The Council has made no specific budgetary provision to offer reductions more widely outside of approved policies, and whilst that would not be a valid reason to refuse an application for relief, any reduction agreed would be directed to cases with “exceptional hardship” in line with the policy. Section 13A is not a power to write off a debt.
- 6.2 Any resident can make an application under the exceptional hardship provisions of the approved Council Tax Support Policy and would be required to demonstrate their exceptional hardship (financial or other exceptional hardship). Decisions are delegated to the Director of Resources, and expenditure linked to the exceptional hardship provisions is generally in the range of £5,000 to £8,000 per year.
- 6.3 Under the Council’s Corporate Debt Recovery Strategy, any debt which cannot be recovered is then dealt with through the Councils wider financial arrangements and may in certain circumstances be written off. Decisions up to a given limit are delegated to the Director of Resources, with debts of a higher value being referred to Members of the Council.
- 6.4 A further and recently introduced statutory provision better known as the Breathing Space Moratorium will take effect on 4 May 2021. It aims to help people in problem debt to better manage their finances, seek professional debt advice and reach sustainable solutions. This will impact on local authorities in the way that they manage their systems for the debts that are eligible for the scheme. A standard breathing space moratorium will provide protections for people in problem debt by pausing enforcement action from creditors, and freezing charges, fees and certain interest on qualifying debts for up to 60 days.

7. Approach to scrutiny

- 7.1 Given the above information relating to the Strategy and related processes, the Committee may wish to review the agreed scope of this scrutiny item with a view to identifying whether there is anything in relation to those scoping points it should look at in greater detail, and then plan it accordingly.
- 7.2 The provision of more detailed information in response to those scoping points has not been forthcoming to date given the extreme pressure Officers in the Revenues and Benefits Team/Resources Directorate remain under due to the pandemic. In the circumstances it is considered there is a limit on the amount of information that can reasonably be requested at a time when resources must be directed towards priority

work in terms of meeting the Council's statutory obligations. Should the Committee decide that further information and/or more detailed scrutiny is required, then a realistic timetable will need to be agreed as part of the further scrutiny planning.

- 7.3 Officers are of the view that there is little or no apparent evidence of any public disquiet or complaints around this subject to suggest that the Council is failing in the exercise of its duty, not following its policy and ignoring the issue of vulnerability. Further, no related issues have been raised through performance monitoring or the internal audit processes. Due to the unforeseen and exceptional circumstances of last year running into this year, it is understood there has been a significantly low level of enforcement activity with the least number of cases going to or past the Court hearing stage. In normal times however, a robust approach to the recovery of debt would be expected for the benefit of the wider public.

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