BEDFORD BOROUGH COUNCIL

Finance & Corporate Services

Fair Debt Collection Policy

Promoting rights, responsibilities, fairness, consistency and proportionality

May 2012

Table of Contents

1.	**Introduction**	**4**
2.	**Overview**	**4**
2.1	Policy Intention	4
2.2	Scope of the Policy	4
2.3	Commencement and Duration	4
2.4	Definitions	5
3.	**Effective Revenue Collection**	**6**
3.1	Good Practice in Revenue Collection	6
3.2	Making it Easy to Pay	7
3.3	Promoting the Take Up of Benefits and Entitlements	9
3.4	Responsibilities of Debtors	9
3.5	Arrangements for Repayment of Arrears	9
4.	**Debt Recovery**	**12**
4.1	Enforcement Action	12
4.2	Recovery Processes	13
4.3	Severe Remedies	13
4.4	Vulnerable People	14
4.5	Bailiffs and Debt Collection Agents	16
4.6	Evasion and Fraud	16
5.	**Promoting Good Practice**	**17**
5.1	Maintaining Good Practice	17
5.2	Promoting Wider Good Practice	17
5.3	Working with Advice Agencies	18
6.	**Miscellaneous**	**19**
6.1	Equality Duty	19
6.2	Exceptions to the Policy	19
6.3	Measuring Performance	19
6.4	Disputes, Complaints and Mistakes	20
6.5	Disclaimer	20
6.6	Use of Data	20

7.	**Appendices**	**21**
	Appendix 1 - Council Tax Recovery Process	21
	Appendix 2 – Non-Domestic Rates Recovery Process	25
	Appendix 3 - Business Improvement District Levy Recovery Process	28
	Appendix 4 - Housing Benefit Overpayment Recovery Process	29
	Appendix 5 - Sundry Debt Recovery Process	34
	Appendix 6 - Use of Severe Remedies	36
	Appendix 7 - Bailiff Code of Practice	43
	Appendix 8 - Collection of Council Tax arrears good practice protocol (Published by Citizens Advice July 2009)	57
	Appendix 9 - Ministry of Justice - National Standards for Enforcement Agents January 2012	61

1. Introduction

Bedford Borough Council has a legal and fiduciary duty to all residents, and to businesses and other organisations that are active in the Borough, to ensure the prompt and cost effective billing, collection and recovery of all sums due to the Council. Delays in collection or non-recovery of debts can lead to higher administrative costs, increased borrowing requirement and reduced resources available for the provision of essential services.

The Council has developed this Fair Debt Collection Policy to promote its aims to be fair and consistent but also firm in the collection of monies owing.

2. Overview

2.1 Policy Intention

This intention of the Council in agreeing this Policy is to achieve the prompt collection of all sums of money it is due, whilst ensuring that a fair, proportionate and consistent approach is taken to the recovery of sums that are not paid when due. The prompt collection of monies due is essential to providing the financial resources needed by the Council to provide services to the benefit of local residents, businesses and other organisations.

2.2 Scope of the Policy

This Policy relates specifically to the collection of the forms of revenue shown below;

- Council Tax
- Non-Domestic Rates (Business Rates)
- Business Improvement District Levy (BID Levies)
- Housing Benefit Overpayments
- Sundry Debts administered by the Council's Finance and Corporate Service Directorate

The Policy may be extended to include other forms of revenue collected by the Council.

2.3 Commencement and Duration

This Policy shall take effect from May 2012.

The Policy will have continuous effect but shall be reviewed from time to time, as required, to ensure that it continues to encourage best practice in the field of local authority revenue collection and meets current legislative requirements.

A review of the Policy shall be conducted at least once every five years.

2.4 Definitions

The following definitions apply for the purpose of this Policy in respect of the terms shown below.

- **Arrears** - for the purposes of this policy the term 'arrears' is used to refer to a sum that is due to be paid to the Council, has not been paid and the date on which payment was due has passed.

- **Debt** - for the purposes of this policy the term 'debt' is used to refer to an amount that is payable to the Council.

- **Debtor** – for the purposes of this policy the term 'debtor' is used to refer to a person, persons, organisation or other legal entity that owes a sum of money to the Council. The term is used for convenience and is not intended to be pejorative.

- **Severe Remedy** - for the purposes of this policy the term 'severe remedy' refers to an application to; have the debtor declared bankrupt or other forms of insolvency; register a charge against a property or apply for the sale of a property against which a charge is registered; or, apply for the debtor to be committed to prison.

- **Vulnerable Person** – for the purposes of this policy the term 'vulnerable person' refers to a person who has exceptional difficulty dealing with the payment of a bill because of their personal circumstances and who requires additional assistance in dealing with the bill in order to meet their financial obligation. Further explanation is provided under section 10 of this Policy.

3. Effective Revenue Collection

3.1 Good Practice in Revenue Collection

The Council aspires to achieve good practice in revenue collection. Good practice is considered to be achieving the best possible cash flow for the Council whilst ensuring that the liability to pay is calculated correctly, enforcement action is reasonable and those who are vulnerable are assisted in meeting their financial obligation to the Council.

To achieve good practice the Council will follow the principles shown below;

- Issue requests for payment promptly and accurately,
- Provide clear bills and recovery notices which show clearly what to pay, when to pay it and how to pay,
- Respond quickly to notifications of changes in circumstances and applications for exemptions, discounts and reliefs,
- Deliver benefit entitlements promptly and accurately,
- Commence action to recover unpaid amounts promptly to avoid the build up of arrears,
- Make it as easy as possible to pay bills by offering a wide choice of convenient payment options,
- Ensure that all debt recovery documents are clear and inform of the recovery procedures, consequences of not paying and the options available to the Council to recover unpaid debts,
- Provide information about discounts, reliefs, reductions, exemptions and benefit and encourage the take-up of entitlement,
- Make it easy to contact the Council through a range of options including face to face, by telephone, by e-mail or in writing,
- Respond to all enquiries promptly and courteously,
- Signpost to sources of independent money and debt advice,
- Be proactive in identifying vulnerable persons and in providing them with advice to assist them in meeting their financial obligation to the Council,
- Wherever possible use the least severe method of recovering a debt (subject to the method realising payment in a suitable period of time),
- Instigate legal proceedings promptly where sums due are not paid,
- Recover the full cost of enforcement action from the debtor, but avoid imposing unnecessary or excessive charges,
- Respect the debtor’s privacy by conducting enforcement activity as discretely as possible.

It is acknowledged that the easier it is to make a payment, then the more likely it is that payment will be made promptly. Therefore, a choice of convenient methods will be offered for payment of bills and invoices and details of these options will be provided with requests for payment.

Whatever the method of payment chosen it is the responsibility of the person making the payment to ensure that payments made reach the Council by the date they are due. The date payment is due and the due date of any instalments will be shown on each request for payment.

Those having difficulty in paying will be actively encouraged to contact the Council as early as possible. Where a debtor contacts the Council because they are experiencing difficulty in making payment the following actions will be taken.

- Check whether the bill should be less or nothing at all by ensuring that all the relevant benefits, discounts, reliefs, exemptions and rebates are being claimed,
- Provide advice on the most appropriate payment methods,
- Consider agreeing a payment arrangement (see separate heading below),
- Provide advice regarding the next course of action that will be taken if payment is not made as required,
- Where appropriate advise them to contact an independent advice agency.

3.2 Making it Easy to Pay

The Council recognises the need to make it as easy as possible for its customers to pay their bills. In order to reduce the cost to the Council and, therefore, local taxpayers the most cost effective methods of payment will be encouraged. For most bills this will be Direct Debit because it is, by far, the most economical collection method available. It is also very reliable, easy to set up and cancel, and is backed by a refund guarantee. It is also the cheapest and most convenient method of payment for the customer. Where Direct Debit is not available the preferred payment method will be on-line by debit or credit card.

The range of payment methods offered is;

- **Direct Debit**

  Direct Debit is offered for payment of Council Tax, Non Domestic Rates and Sundry Debts. A choice of three payment dates is available each month for payment of Council Tax and Non-Domestic Rates with an option for pay over twelve months if selecting to pay on 15th of the month.

- **On-Line via the Council's Website**

  Council Tax, Non Domestic Rates, BIDS, Housing Benefit Overpayments and Sundry Debts may be paid by debit and credit card through the Council's website www.bedford.gov.uk.

A service charge calculated as a percentage of the amount paid* may be made where a credit card is used for payment of Council Tax, Non Domestic Rates, BID Levies & Housing Benefit Overpayments and may be made for certain sundry debts. The full amount collected in service charges will be used to meet the charge made to the Council by its card payment service provider. The service charge made may vary in the event that the charge incurred by the Council changes.

- **24 hour Automated Telephone payment line**

  Council Tax, Non Domestic Rates, BID Levies, Housing Benefit Overpayments and Sundry Debts may be paid by debit or credit card by telephoning 01234 221869.

  A service charge may be made where a credit card is used for payment as detailed above.

- **Post Offices and Payzone outlets**

  Council Tax, Non Domestic Rates and BID Levies can be paid free of charge at any Post Office or Payzone outlet provided the customer presents a bar coded document. It is intended to extend bar coding to other documents to allow payment of other bills in the future.

- **Bank Transfer / BACS / Standing Order**

  Payment of Council Tax, Non Domestic Rates, BID Levies, Housing Benefit Overpayments and Sundry Debts may be made directly to the Council's bank account, details of which are provided with requests for payment.

- **At the Council's Payment Office**

  Payment of Council Tax, Non Domestic Rates, BID Levies, Housing Benefit Overpayments and Sundry Debts may be made by cash, cheque, debit or credit card at the Council's payment office Monday to Friday, 9am to 4.00pm and 9am to 1pm on Saturdays (opening hours may be subject to change). Some payments made by credit card will incur a service charge as detailed above.

Additional payment methods may be offered in the future where it is economically viable to do so.

(* 1.67% at May 2012 but may be subject to change)

3.3 Promoting the Take Up of Benefits and Entitlements

The Council will take a proactive role in ensuring that no one pays more than they are legally required to, by promoting the take up of entitlement to benefits, discounts, exemptions, reliefs etc.

When a benefit application form is received it will be reviewed in the light of any entitlement to other welfare benefits or tax credits or, in respect of Council Tax, eligibility for a reduction in the bill, e.g. single person discount. Where eligibility for these or other benefits is identified the claimant will be notified accordingly and advised how to claim.

3.4 Responsibilities of Debtors

The Council expects any person or organisation that owes a sum of money to the Council, or should have a liability to pay, to comply with any and all legal obligations in respect of the liability or potential liability. The Council's commitments to a fair debt collection process are set out in this Policy and it is the Council's expectations that those owing sums to the Council will contribute to this process by abiding with the following principles;

- Pay amounts due promptly to ensure receipt by the Council on or before the date that payment is due,
- Follow instructions provided regarding the making of payments to ensure payments are credited correctly against the amount due,
- Inform the Council promptly of any changes to their circumstances that may affect the amount to be paid or the ability to pay,
- Notify the Council promptly if their address changes,
- Contact the Council promptly if it is believed the amount charged is not correct, both where the amount may be too much or too little,
- Contact the Council promptly if they are unable to pay an amount that is due,
- Respect the Council, its employees and its agents and respond to them courteously,
- Be frank and honest when providing information in connection with the billing, collection or recovery of sums due to the Council.

3.5 Arrangements for Repayment of Arrears

It is the Council's expectation that all bills should be paid promptly as due. However, it is recognised that occasionally a debtor will experience genuine difficulty in making a payment when it is due.

Anyone experiencing such difficulty is encouraged to contact the Council at the earliest opportunity to discuss repayment options. Where contact is made consideration will be given to entering into an individual repayment arrangement based on the debtor's personal circumstances. The Council's staff will seek to obtain as much information as possible about the debtor's circumstances, as considered necessary in order to make the best

assessment of their ability to pay and to determine a realistic payment arrangement. More detailed information is likely to be required where the debtor claims to be unable to pay the debt over a short space of time and where the debt will not be repaid in full by the end of the financial year.

Where a debtor refuses to divulge any information that is considered essential to assessing their ability to pay then no payment agreement will be entered into.

When undertaking a detailed assessment of a person's financial situation and evaluating their ability to pay an income and expenditure form replicating the form used by the Citizen Advice Bureau will be used. Expenditure declared will be measured against the Bureau's common financial statement. This will ensure a consistent approach is taken to assessing a person's financial circumstances using a widely recognised methodology.

In accordance with recognised good debt management practice the Council will expect the debtor to undertake to pay priority debts in preference to other debts. Priority debts are those debts that can result in loss of an essential service, loss of a person's home or imprisonment such as;

- Mortgage or Rent
- Council Tax
- Electricity,
- Gas,
- Telephone
- Water
- Secured Loan
- Child Support Agency deductions
- Maintenance Arrears
- Income Tax
- VAT
- Court Fine

The principles that will be followed in determining repayment arrangements are;

- The Council will seek repayment of all outstanding arrears as soon as possible and in all instances before the end of the financial year,
- Payment arrangements extending beyond the end of the financial year should only be made in exceptional circumstances following a detailed assessment of the debtor's ability to pay,
- Repayment should commence promptly and the first payment of any payment arrangement should normally be payable within no more than one month of the agreement being reached,
- Where liability is ongoing any arrangement will require payments to be over and above the on-going monthly liability, except in the most exceptional circumstances (for example where a debtors financial circumstances are expected to improve in the near future),

- Where a payment arrangement is accepted at less than the rate at which liability is accruing, the arrangement should be for a maximum of three months but may be extended further following review, but on each occasion shall not be extended for more than three months,
- Payment of current year debts should be given priority except where this would conflict with arrangements already in place for previous years' debts,
- Payment arrangements should not normally be for less than could be obtained by attachment of earnings or deductions from benefits unless there are extenuating circumstance,
- Payment arrangements in respect of local taxes and BID Levies should be made on the basis that the Council will progress enforcement action to the point of obtaining a liability order from the Magistrates' Court,
- Payment arrangements should be refused where it is considered that entering into an arrangement may jeopordise the likelihood of the Council recovering payment in full (e.g. if there is a risk the debtor will be declared insolvent),
- Payment arrangements may be refused where the debtor appears to have sufficient assets which could be realised to pay the debt but the debtor is unwilling to take steps to realise the assets.

It is recognised that debtors may occasionally make unrealistic offers of payment that they cannot afford. Where the Council has reason to believe that an offer of repayment is unrealistic, for example a person is known to be on a low income but offers to make substantial payment, further information will be sought in order to agree an affordable rate of repayment.

Payment arrangements will normally be confirmed in writing so that the debtor is aware of the amount and frequency of their payments.

The responsibility for making sure that payment reaches the account by the due date remains with the debtor. This means that debtors must allow sufficient time for the payment to reach the Council by the due date.

The Council reserves the right to refuse to accept offers to repayment.

Where a payment arrangement has been agreed but payment is not received strictly in accordance with the agreement, action to enforce payment will be recommenced promptly following the default in payment. Where a debtor has failed to make payments as agreed further payment arrangements will not normally be considered unless the debtor's circumstances have changed. Anyone experiencing difficulty in making payments under a payment arrangement due to a change in circumstances should contact the Council as soon as they experience difficulty.

4. Debt Recovery

4.1 Enforcement Action

It is widely recognised to be good practice to take prompt action where a payment becomes overdue. Commencing action promptly ensures that the debtor is reminded of the requirement to make a payment as early as possible, allowing them the opportunity to bring payments up to date before the debt increases or more severe action to recover payment is commenced.

The Council will contact promptly in writing, within the appropriate legislative timescale, any person or organisation that fails to make a payment to inform that the payment is overdue, the payment options available and the consequences of failing to pay. Wherever possible correspondence issued in relation to debts will be provided in simple language.

Where the collection of sums due results in increased cost to the Council the person owing the debt should be responsible for paying the full cost incurred to recover the amount. Therefore, the Council will seek to recover all costs or fees that are legitimately due from a debtor. It is a requirement of this Policy that any costs of fees should be reasonable and should reflect the actual cost incurred.

Due to the volume of accounts payable to the Council, the Council will employ automated processes to progress the recovery of sums due. However, where a debtor contacts the Council in response to enforcement action the Council will consider each case individually. Automated processes will **not** be used to progress severe remedies.

The Council recognises that people do not pay their debts for a variety of reasons:

- Some people genuinely struggle to meet their payments and need advice and assistance in budget management,
- Some people are not receiving the benefits or reductions they are entitled to,
- Some people go through personal difficulties that result in short-term problems in paying their debts,
- Some people deliberately choose to set out to delay and not pay their debts,
- Some people are not very organised in managing their finances resulting in erratic payments.

Where the debtor is willing to provide information about their personal and financial circumstance the Council will take this into account in determining

the enforcement action to be taken, and in agreeing any payment arrangement.

The debtor's previous history in paying sums due to the Council will also be taken into account.

4.2 Recovery Processes

The Council will establish timely and vigorous processes for the recovery of overdue sums and will start to recover unpaid debt promptly when a payment becomes overdue or an instalment plan or payment arrangement is not maintained. The Council will be stringent in recovering overdue amounts from persistent non-payers and late-payers.

Details of the recovery processes to be followed for the different types of debt are contained in the following appendices to this document.

Appendix 1 Council Tax Recovery Process
Appendix 2 Non-Domestic Rates Recovery Process
Appendix 3 Business Improvement District Levy Recovery Process
Appendix 4 Housing and Council Tax Benefit Overpayment Recovery Process
Appendix 5 Sundry Debt Recovery Process
Appendix 6 Use of Severe Remedies
Appendix 7 Bailiff Code of Practice

In pursuing the payment of overdue sums the Council may utilise any and all of the methods available to it in law. However, the enforcement actions employed in each case should be on an escalating basis, with repayment being sought by the least severe action, and then actions of increasing severity used where actions are not effective in securing payment.

4.3 Severe Remedies

The following enforcement actions are considered to be severe remedies and should only be used in accordance with appendix 6 to this Policy.

- An application to have the debtor declared bankrupt or for other forms of insolvency;
- An application to register a charge against a property or apply for the sale of a property against which a charge is registered;
- An application to have the debtor committed to prison.

4.4 Vulnerable People

The Council recognises 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.

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,
- Postponing enforcement 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 lower repayment than would normally be agreed,
- Informing the Council's Adults and Community Services Directorate of 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 identifies characteristics of persons who could be considered vulnerable;

- **Disabled Persons**

  A person with a disability is not necessarily vulnerable for the purposes of this Policy. However, where the disability affects the persons ability to deal with their financial affairs they should be considered to be vulnerable.

- **Persons with Mental Impairment or Learning Difficulties**

  If it is evident that the debtor has mental impairment or learning difficulties they should be considered to be vulnerable.

- **Persons Experiencing Serious Illness, including Mental Illness**

  Where the debtor (or the debtor's partner) appears to be suffering from any condition which is serious or life threatening they could be considered to be vulnerable.

- **Persons receiving Income Support, Job Seeker's Allowance, Employment and Support Allowance or Pension Credit (or where a benefit application has been made but not yet determined)**

  Those on Income Support, Job Seeker's Allowance, Employment and Support Allowance or Pension Credit are considered to be vulnerable

for the purpose of this Policy as they are living on a subsistence level benefit.

- **Unemployed Persons**

  Unemployment does not automatically mean the debtor is vulnerable. For example a person may have received a substantial redundancy payment and be financial secure in the short-term. However, loss of employment may result in serious financial difficulties if a person is suddenly unable to meet their existing financial commitments.

  A person who has recently become unemployed after a long period of employment may be unfamiliar with processes for claiming benefits and may need additional assistance to understand their entitlements.

- **A Person who has Difficulty Understanding English**

  Where a person does not understand either spoken or written English they should be considered to be vulnerable, particularly if they do not have support from family members who can speak and read English. Appropriate translations should be provided where necessary.

- **Persons Aged Under 18**

  It is unlikely that a person aged under 18 years will owe any sums to the Council, however, it is possible that a person may assist or care for a parent or other older person and could contact the Council on their behalf. A person aged under 18 years may be the only person at home when an enforcement visit is made. Anyone aged under 18 years should automatically be considered to be vulnerable.

- **Elderly Persons**

  An elderly person is not necessarily vulnerable and many elderly people are financially secure and both mentally and physically healthy. However, some elderly people are frail, confused, ill, and living on fixed and limited incomes and, therefore, are considered to be vulnerable.

- **A Person Recently Bereaved**

  A person suffering the recent bereavement of a close relative could be considered to be a vulnerable person.

- **Lone Parents**

  A lone parent is not necessarily a vulnerable person and it is recognised that some lone parents are financially secure. However, lone parents, and in particular those with very young children, may have difficulty in undertaking employment and, therefore, rely on Welfare Benefits.

- **Pregnancy**

  A person in the later stages of pregnancy may find dealing with serious financial issues stressful, particularly if they are not supported by a partner, or if they are on a low income or benefits. This may be compounded by any additional essential expenditure due to the pregnancy or birth of a child.

- **A person that has difficulty reading or writing**

  A person who has difficultly reading or writing should usually be regarded as vulnerable because they will have difficulty in understanding written notices. People who have difficultly reading or writing may be reluctant to reveal their difficulties and where there is concern that a person has such difficulties the issue should be addressed in a sensitive manner.

This list is not intended to be exhaustive and each case should be considered on an individual basis taking into account all relevant factors. For the purpose of this Policy the key factor in determining that a person should be regarded as vulnerable will be that the circumstances which give rise to the concern that the person is vulnerable affect their ability to deal with their financial affairs or ability to pay.

Particular care must be taken in authorising enforcement action where the debtor is known to be vulnerable. Further guidance is provided in Appendix 6 relating to the use of severe remedies.

4.5 Bailiffs and Debt Collection Agents

A Code of Practice to be followed by bailiffs and debt collection agents appointed by the Council is set out at Appendix 7 to this Policy.

4.6 Evasion and Fraud

The unlawful evasion of payments due to the Council reduces the financial resources available to the Council and has a direct impact on all residents, businesses and other organisations that rely on Council services. Unlawful evasion or fraud to avoid payment will not be tolerated and where this is identified then in addition to taking action to enforce payment the Council will seek to impose such further penalties or sanctions as the law allows.

Where debts arise through evasion or fraud the Council will seek to recover payment in full as quickly as possible and will only agree payment arrangements in very exceptional circumstances.

5. Promoting Good Practice

5.1 Maintaining Good Practice

The Council will seek to comply with current good practice guidance in respect of local authority revenue collection published by recognised bodies, except where to do so would conflict with the best interests of the Council or local residents.

In particular the Council will have regard to good practice guidance provided by professional institutes such as the Chartered Institute of Public Finance and Accountancy and the Institute of Revenues, Rating and Valuation. The Council will also seek to comply with the following guidance;

- Collection of Council Tax arrears good practice protocol (Published by Citizens Advice July 2009)

- National Standards for Enforcement Agents January 2012 (Published by Ministry of Justice)

Staff employed in the collection of revenue will receive appropriate training commensurate with their duties. Professional development and membership of professional institutes will be encouraged.

5.2 Promoting Wider Good Practice

The Council encourages all organisations and individuals collecting sums due from residents, businesses and other organisations in Bedford Borough to follow good practice in the collection and recovery of debts.

Organisations that are not conducted or established for profit wishing to use this Policy as a basis for their own good practice may do so, but should indicate that their Policy is based on the Bedford Borough Council Fair Debt Collection Policy in any published version of their Policy. The contents of this policy are the copyright of Bedford Borough Council and may not be used for commercial purposes without express consent from the Council.

Organisations adapting the Policy for their own purposes should satisfy themselves that the Policy is suitable for their purposes and complies with the relevant law. Bedford Borough Council will not be held liable for any losses or damages that may arise as a result of an individual or organisation adopting this Policy or any revised version of the Policy.

5.3 Working with Advice Agencies

The Council will seek to work in partnership with local advice agencies and refer people who appear to have complex benefit or money advice problems.

Wherever possible summonses issued on behalf of the Magistrates' Court for non payment of local taxes will also include information about advice agencies and the services they offer.

When assessing a person's financial situation an income and expenditure form replicating the form used by the Citizens Advice Bureau will be used and expenditure declared will be measured against the Bureau's common financial statement. This will ensure a consistent approach is taken to assessing a person's financial circumstances using a widely recognised methodology.

Advice Agencies will be provided with an email address and telephone number on which to contact the relevant Council service so that issues can be taken up and resolved quickly.

The Council will seek to comply with 'Collection of Council Tax arrears good practice protocol' published by Citizens Advice in July 2009.

6. Miscellaneous

6.1 Equality Duty

The Council has a statutory Equality Duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, as set out in Section 149(1) of the Equality Act 2010.

In determining this Policy consideration has been given to the Council's statutory equality duty to eliminate unlawful discrimination, advance equality of opportunity and foster good relations and an equality analysis was conducted. It was concluded that this Policy has a positive effect on the Council's duty.

Acting in accordance with this Policy will help to ensure that the collection of sums due is conducted in a consistent and objective manner that will reduce the risk of inadvertent discrimination against persons with protected equality characteristics. It will also ensure and that revenue collection and recovery is delivered in an equally accessible manner to all members of the community.

6.2 Exceptions to the Policy

On rare occasions it may be in the best interests of the Council or local residents for action to be taken in the collection or recovery of a debt other than in accordance with this Policy. On such occasions a decision may be taken by an appropriately senior officer to allow an exception to the Policy having considered the normal requirements of the Policy, the specific case and the interests of the Council and local residents.

Where such an exception is made to the Policy the decision and the reason for the decision shall be recorded in writing by the officer making the decision.

6.3 Measuring Performance

The Council aspires to be a high performing Council in all its undertakings including the collection of revenue. The collection of revenue will be monitored through the use of performance indicators. Key indicators of performance will be reported as part of the Council's performance management framework.

Where comparative information is available either nationally or locally the Council will aim to be in the top 25% performing unitary authorities and will publish performance information annually.

The performance of external service providers will be monitored to ensure services are provided in accordance with this Policy.

6.4 Disputes, Complaints and Mistakes

It is recognised that mistakes in the billing, collection or recovery of amounts due can cause distress and the Council aims to issue all bills for the correct amount and to ensure enforcement action is necessary and proportionate. If an apparent mistake is brought to the Council's attention the issue will be investigated promptly and where a mistake has been made an apology will be made and the mistake rectified.

Compensation will not normally be considered except where it can be demonstrated that the mistake has directly resulted in a financial loss to the debtor. Requests for compensation will be considered in accordance with the Council's Constitution and in considering requests the interests of local taxpayers must be taken into consideration.

Any disputes raised regarding the application of this Policy should, in the first instance, be raised with the relevant Council service. In the event that the dispute cannot be resolved then the dispute shall be dealt with in accordance with the Council's Complaints Procedure.

6.5 Disclaimer

The Council will seek to adhere to this Policy, however, no omission in respect of the requirements of this Policy shall invalidate a requirement to make a payment, nor shall it be accepted as a basis for delay in the making of a payment.

The Policy does not affect the statutory rights of the Council or the debtor.

6.6 Use of Data

The Council will collect and store personal data for the purposes of the effective billing, collection and recovery of sums due. Data retained for this purpose will be processed in accordance with the Data Protection Act 1998 and will be stored securely at all times.

Data will be shared with agents or contractors appointed by the Council for the purposes of the billing, collection and recovery of sums due. Data may also be shared within the Council or with external organisations where the law allows and in particular where it is in the interests of the debtor or where it will prevent fraud or the unlawful evasion of payment of sums due.

Appendix 1

Council Tax Recovery Process

The collection of Council Tax is governed by The Local Government Finance Act 1992 and other subsequent legislation. Every dwelling within the area of Bedford Borough Council is subject to the Council Tax based on the Valuation band of the dwelling. A bill is issued annually to the liable person, usually the resident of an occupied dwelling or the owner of an unoccupied dwelling, requiring payment in either ten or twelve monthly instalments. The income received from Council Tax is kept by the Council, with the exception of approximately 15% which is collected on behalf of Bedfordshire & Luton Fire Authority and Bedfordshire Police Authority, and precepts collected on behalf of parish councils.

Explanation of Recovery terms

Reminder - A legal document issued when an instalment is overdue.

Final Notice - A legal document issued when an account is in arrears and the right to pay by instalments has been lost or where there is no statutory right to instalments.

Liability Order Summons - A document issued by the Magistrates' Court summoning the debtor to attend a hearing where the Court will consider making a Liability Order.

Liability Order - An order made by the Magistrates, if they are satisfied the Council Tax is outstanding, which gives the Council the power to take further action to enforce payment. The main options are;

- Ordering deductions to be made from earnings or benefits (Income Support, Pension Credit, Employment and Support Allowance and Job Seeker's Allowance)
- Instructing a bailiff to seize and sell the debtor's goods
- Bankruptcy proceedings
- Applying to the County Court for a charge to be registered against the property
- Applying to the Magistrates' Court for the debtor to be committed to prison

Where payment of Council Tax is not made as due the Council will take the following action:

A **reminder** will be issued advising the amount that is overdue and requesting payments be brought up to date within seven days. Should the amount due not be received then after a further seven days the full remaining balance of the year's Council Tax will become due. A complaint will then be made to the Magistrates' Court requesting the issue of a liability order summons.

Where payments are brought up to date following the issue of a reminder, but then a further payment becomes overdue a **second reminder** will be issued. Should the amount due not be received then after a further seven days the full remaining balance of the year's Council Tax will become due. A complaint will then be made to the Magistrates' Court requesting the issue of a liability order summons.

Where payments are brought up to date following the issue of a second reminder, but then a further payment becomes overdue a **final notice** will be issued advising that the right to pay by instalments has been lost and that the full remaining balance of the year's Council Tax should be paid within seven days. In the event payment in full is not received a complaint will then be made to the Magistrates' Court requesting the issue of a liability order summons.

Once a complaint is made to the Court the Magistrates will normally issue a **summons** to attend a liability order hearing. The costs incurred by the Council in making the complaint will be added to the outstanding Council Tax and the application for a liability order will include these costs. The costs to be charged will be determined in accordance with the Council's normal procedure for setting fees and charges.

Whilst the full balance shown on a summons is due immediately the Council will normally incorporate with the summons an offer to accept payment of the full balance, including costs, over the remaining months within the statutory instalment scheme. Such an offer will be subject to the hearing proceeding and a liability order being granted.

Information about sources of free and independent money and debt advice will be included with all Council Tax liability order summonses.

Where a debtor is unable to pay in accordance with the proposed payment arrangement then they will be asked to provide full details of their income and expenditure using the Council's standard income and expenditure form. Once this information is provided consideration will be given to agreeing a payment arrangement over an extended period of time appropriate to their financial circumstances.

Once a **Liability Order** has been granted by the Magistrates the Council will;

- Monitor payment arrangements where tax payers have already contacted the Council or have made the first payment on the summons payment arrangement,
- Order deductions from Benefits where appropriate,
- Order an attachment of earnings order where appropriate,
- Order deductions from the allowances of a member of a local authority
- In all other cases a **Liability Order Notice** is sent requesting information about the person's Income and advising that if there is no response within 14 days the debt will be passed to the a bailiff. A list of the fees the bailiff may charge is enclosed with the notice,

- Should there be no response to the **Liability Order Notice** after 14 days the case is referred to the bailiff for further enforcement action. The bailiff will charge additional fees in accordance with the relevant statutory provisions. The bailiff must abide by the Council Code of Practice whilst seeking to enforce payment,
- Small debts may be referred to a collection agent rather than a bailiff.

A payment arrangement may be considered at any stage in the enforcement process and the Council aims to consider an individual's circumstances and ability to pay. However, the Council may refuse to accept payment arrangements where they are unreasonable or it is considered there is little likelihood the arrangement will be kept.

Where a payment arrangement is defaulted upon the case will be dealt with immediately under the normal collection procedure. The case will be checked thoroughly to establish which method of recovery is appropriate prior to enforcement action being taken. However, if the taxpayer contacts the Council to explain why the arrangement has been broken then consideration may be given to making a further arrangement.

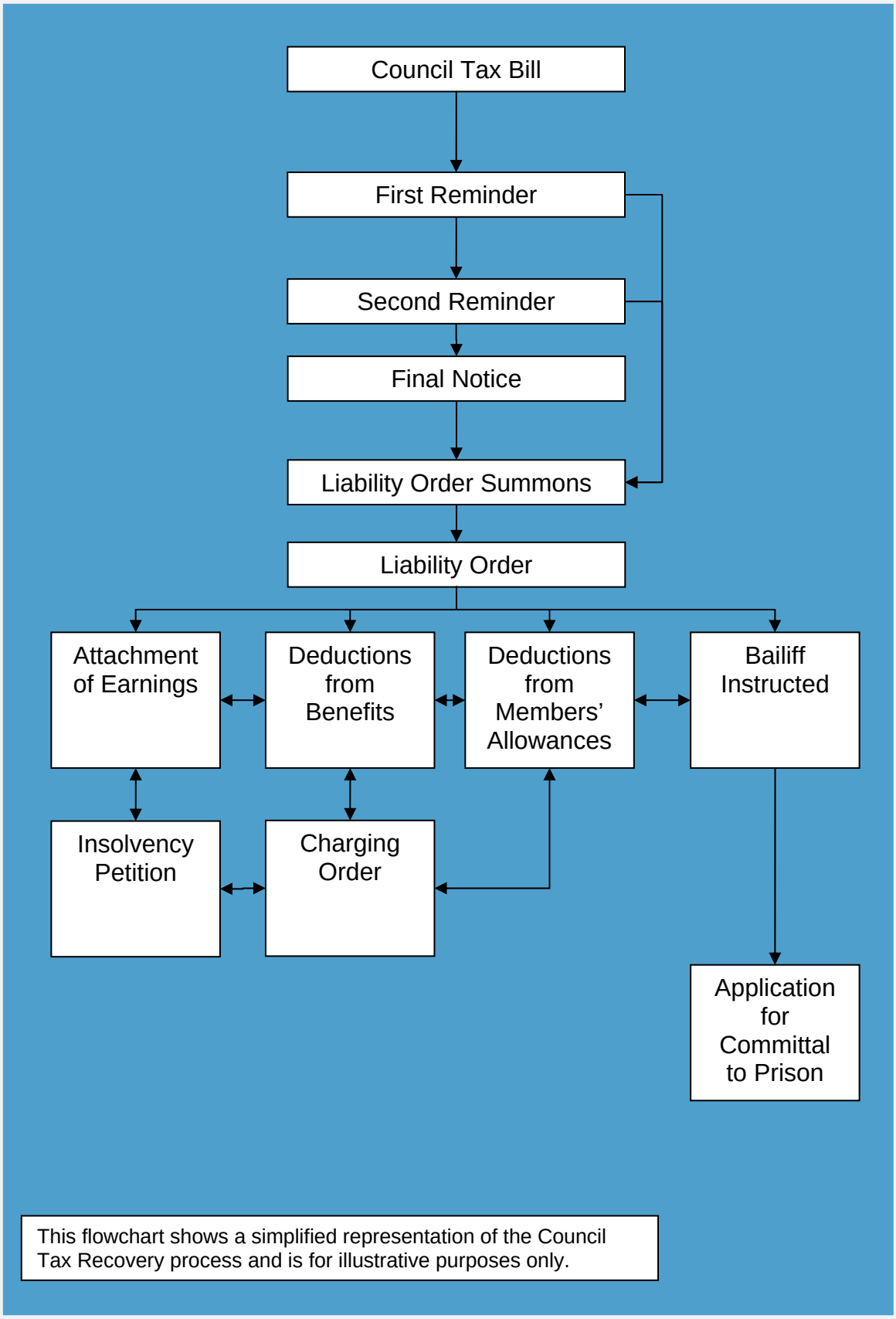
If all other enforcement options fail then the Council will consider using more severe remedies to collect the debt.

The remedies available are to;

- Instigate bankruptcy proceedings
- Applying to the County Court for a charging to be registered against the property
- Applying to the Magistrate's Court for the debtor to be committed to prison

Use of these remedies will only be considered in line with Appendix 6 to this Policy.

Council Tax Recovery Process Flowchart



Appendix 2

Non-Domestic Rates Recovery Process

The collection of Non Domestic Rates is governed by The Local Government Finance Act 1988 and other subsequent legislation. Every non domestic property, which can include land, advertising rights, telecommunications masts, moorings etc, within the area of Bedford Borough Council is subject to Non Domestic Rates based on the rateable value of the property. A bill is issued annually to the liable person, usually the person entitled to possession, requiring payment in ten monthly instalments. The income from Non Domestic Rates is currently paid into a national pool administered by central government and then redistributed to all councils in the form of a grant. However, from April 2013 the Council will retain a proportion of the rates it collects.

Explanation of Recovery terms

Reminder - A legal document issued when an instalment is overdue.

Final Notice - A legal document issued when an account is in arrears and the right to pay by instalments has been lost or where there is no statutory right to instalments.

Liability Order Summons - A document issued by the Magistrates' Court summoning the debtor to attend a hearing where the Court will consider making a Liability Order.

Liability Order - An order made by the Magistrates, if they are satisfied the rates are outstanding, which gives the Council the power to take further action to enforce payment. The main options are;

- Instructing a bailiff to seize and sell the debtor's goods
- Commencing Bankruptcy or winding up proceedings
- Appling to the Court for the debtors committal to prison

Where payments due have not been made the Council will take the following action:

A **reminder** will be issued advising the amount that is overdue and requesting payments be brought up to date within seven days. Should the amount due not be received then after a further seven days the full remaining balance of the year's rates will become due. A complaint will then be made to the Magistrates' Court requesting the issue of a liability order summons.

Where payments are brought up to date following the issue of a reminder, but then a further payment becomes overdue a **final notice** will be issued advising that the right to pay by instalments has been lost and that the full remaining balance of the year's rates should be paid within seven days. In

the event payment in full is not received a complaint will then be made to the Magistrates' Court requesting the issue of a liability order summons

Once a complaint is made to the Court the Magistrates will normally issue a **summons** to attend a liability order hearing. The costs incurred by the Council in making the complaint will be added to the outstanding rates and the application for a liability order will include these costs. The costs to be charged will be determined in accordance with the Council's normal procedure for setting fees and charges.

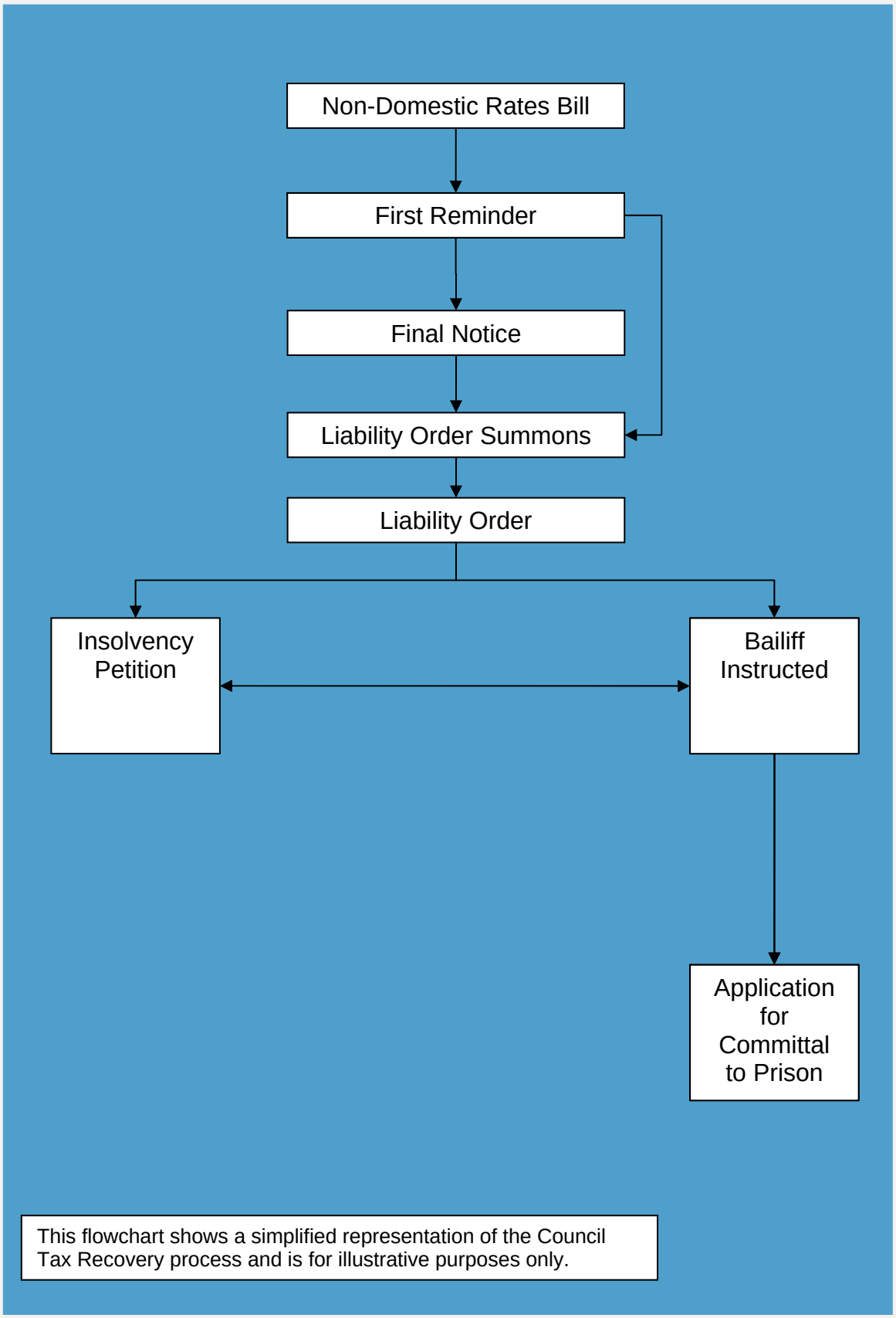
Once a **Liability Order** has been obtained in court the Council will:

- Monitor payment arrangements where business ratepayers have already contacted the Council and agreed a payment arrangement,
- In most other cases the **Liability Order** is referred to the Council's bailiff for collection. The bailiff will charge additional fees in accordance with the relevant statutory provisions. The bailiff must abide by the Council Code of Practice whilst seeking to enforce payment.
- If the bailiff is unable to collect the debt consideration will be given to the use of more severe recovery proceedings such as bankruptcy/winding up proceedings or applying to the Magistrates' Court to have the ratepayer committed to prison. Use of these remedies will only be undertaken in line with appendix 6 to this Policy.

A payment arrangement may be discussed at any stage and the Council aims to consider the business's specific circumstances and ability to pay.

If a payment arrangement is not adhered to the case will be dealt with immediately under the standard recovery action procedure. The case will be checked thoroughly to establish which method of recovery is appropriate prior to enforcement action being taken.

Non-Domestic Rates Recovery Process Flowchart



Appendix 3

Business Improvement District Levy Recovery Process

The collection of Business Improvement District levies (BIDs) is governed by the Business Improvement Districts (England) Regulations 2004. The BID levy is payable by the non-domestic ratepayer for every non-domestic property with a rateable value of £8,100 and above within the BID area of the Town Centre, with the exception of properties occupied by charities as offices. A levy notice is issued annually to the liable person, the non-domestic ratepayer, requiring payment in one instalment.

Where payment is not received as requested by the levy notice the recovery process required to be used is the same process used for the recovery of unpaid non-domestic rates. Since payment is due in one instalment there is no requirement to issue a reminder notice and the first document issued after the levy notice will be a final notice.

Due to the requirement to pay in one instalment, and the relatively small amount of the levy, the Council will only enter into arrangements to pay by instalments in exceptional circumstances.

Appendix 4

Overpaid Housing Benefit Recovery Process

Section 75 of The Social Security Administration Act 1992 provides the Council with the power to prescribe the circumstances when an overpayment is recoverable. This Act underpins The Housing Benefit Regulations 2006 (HBR 2006) and outlines the Council's right to recover, discretion to recover, whom to seek recovery from and methods of recovery.

Decision Making

The Council must make a number of decisions in the course of calculating overpayments of Housing Benefit and undertaking recovery action. In making these decisions the Council will have due regard to the circumstances of each case and will not apply "blanket" policies which may constitute a fettering of its discretion.

The Council specifically undertakes to ensure that no person is required to repay unrecoverable overpayments. An unrecoverable overpayment (as defined in HBR 2006) is one that:

1. has been caused by official error;
2. and the claimant or recipient of the benefit did not contribute to it;
3. and that the claimant or recipient of the benefit could not reasonably have been expected to know that an overpayment was occurring at the time that payment was made or at the time of notification

In respect of recoverable overpayments, due consideration will be given to the question of whether or not the Council should exercise its discretion not to recover the debt.

No landlord/agent will be required to repay an overpayment where the conditions of Regulation 101(1) of the HBR 2006 are satisfied. The Council will then decide whom to seek recovery from in accordance with HBR 101 (2).

Principles of Overpayment Recovery

The Council will seek to recover overpaid Housing Benefit in the most efficient and cost-effective manner, having regard to its statutory obligation to protect public funds. The Council will, however, have regard to the circumstances of the individual from whom recovery is sought. The person from whom recovery is sought shall have the right to request a revised repayment arrangement based on their financial circumstances. The minimum rate of recovery is set in accordance with the lower level rate of recovery, as determined by the Department for Work and Pensions. The Council will review all concessionary payment arrangements periodically. If the overpayment is subject to an appeal, either with the Council or the DWP, the

Council will consider whether recovery should be suspended or not, pending the outcome of the appeal.

Specific Methods of Recovery

1. Instalment recovery may be used by the Council where the debtor has continuing entitlement to Housing Benefit. A portion of the weekly entitlement is withheld and offset from the outstanding debt until it has been fully recovered. The provisions of Regulation 102 limit the maximum amount that may be recovered each week and the Council will not exceed these maximum amounts without express written agreement from the debtor. In any case, the council will not reduce a person's minimum weekly payable benefit below 50 pence. At the outset of instalment recovery, the Council will decide on the level of deduction to be made on the basis of the information available. The claimant will be notified of the commencement of instalment recovery. If the claimant is experiencing financial hardship he/she may request a revised repayment arrangement based on their financial circumstances not withstanding the minimum rate of recovery. The Council may request such reasonable information as is necessary to decide on an amended level of recovery.

2. Offset of entitlement (netting off). The Council may offset some or all of any amount of benefit owed to the claimant to recover an overpayment in part or full (HBR102 (1)). This may occur, for example, where an amount of benefit is owed due to the effect of a "backdated" advantageous change of circumstances.

   Wherever applicable, underlying entitlement to benefit during the overpayment period will be taken into account and, if the necessary information for calculation of underlying entitlement is not available, claimants will be given at least one opportunity to provide that information.

3. Recovery from "blameless tenants". Where an overpayment is recoverable from a third party, such as a landlord or agent, and Housing Benefit continues to be paid to that third party, the Council may recover the overpayment by deducting some or all of any due payments to the third party. Recovery may be made in this manner even if the third party is no longer receiving payment of benefit direct for the person in respect of whom the overpayment was made, in which case recovery is said to be being made from the entitlement of the third party's "blameless tenants".

4. Recovery from other Social Security benefits. If recovery from ongoing entitlement to Housing Benefit is not available, the Council may seek to recover overpaid benefit from another Social Security benefit (as detailed in HBR 105(1)) in payment to the claimant.

5. Recovery from Housing Benefit paid by another council. This method of recovery may be appropriate where the debtor has left the creditor Council's area and it can be established that they are in receipt of Housing Benefit in another council's area. The debt may then be recovered by way of the new Council, which will make deductions from ongoing entitlement on behalf of the creditor Council.

6. Recovery via Sundry Debtor invoice. Where no other method of recovery can be used, the Council will issue an invoice to the debtor for payment. Payment is due on demand unless the debtor is experiencing financial hardship and cannot make full payment. In this instance, the debtor should contact the Overpayment Section to advise them of this.

   Unless a mutually acceptable arrangement can be agreed, the debtor will be asked to complete an Income and Expenditure form and a payment arrangement will be made based upon the information provided. Following the issue of the first invoice if neither payment nor any contact is made from the debtor, a reminder invoice will be issued 28 days later. If neither payment nor any contact is made from the debtor, a final invoice will be issued 7 days later. Where payment or contact is still not received, the Council will take further recovery action.

7. Collection Agents. Where no payment has been received 7 days after the final invoice has been issued, the Council may instruct Collection Agents to visit the debtor with a view to securing payment or a payment arrangement.

8. Registration of debts at County Court. Where recovery by any of the methods outlined above is unavailable or impracticable, the Council may seek to enforce recovery by registering the debt at a County Court. This has the effect of enabling the Council to use recovery methods that are otherwise unavailable without obtaining a County Court judgement (CCJ). The Council will not seek to register a debt at County Court before the debtor has had the opportunity to dispute the overpayment decision (i.e. one calendar month), nor will it seek registration where a request for revision or appeal is outstanding. The Council will incur costs when registering a debt and these will be added to the total debt owed. The effect of registering the debt at County Court will enable the Council to enforce the Order via one or any of the methods detailed below:

   - Attachment of Earnings Order
   - Charging Order
   - Warrant of Execution
   - 3rd Party Debt Order

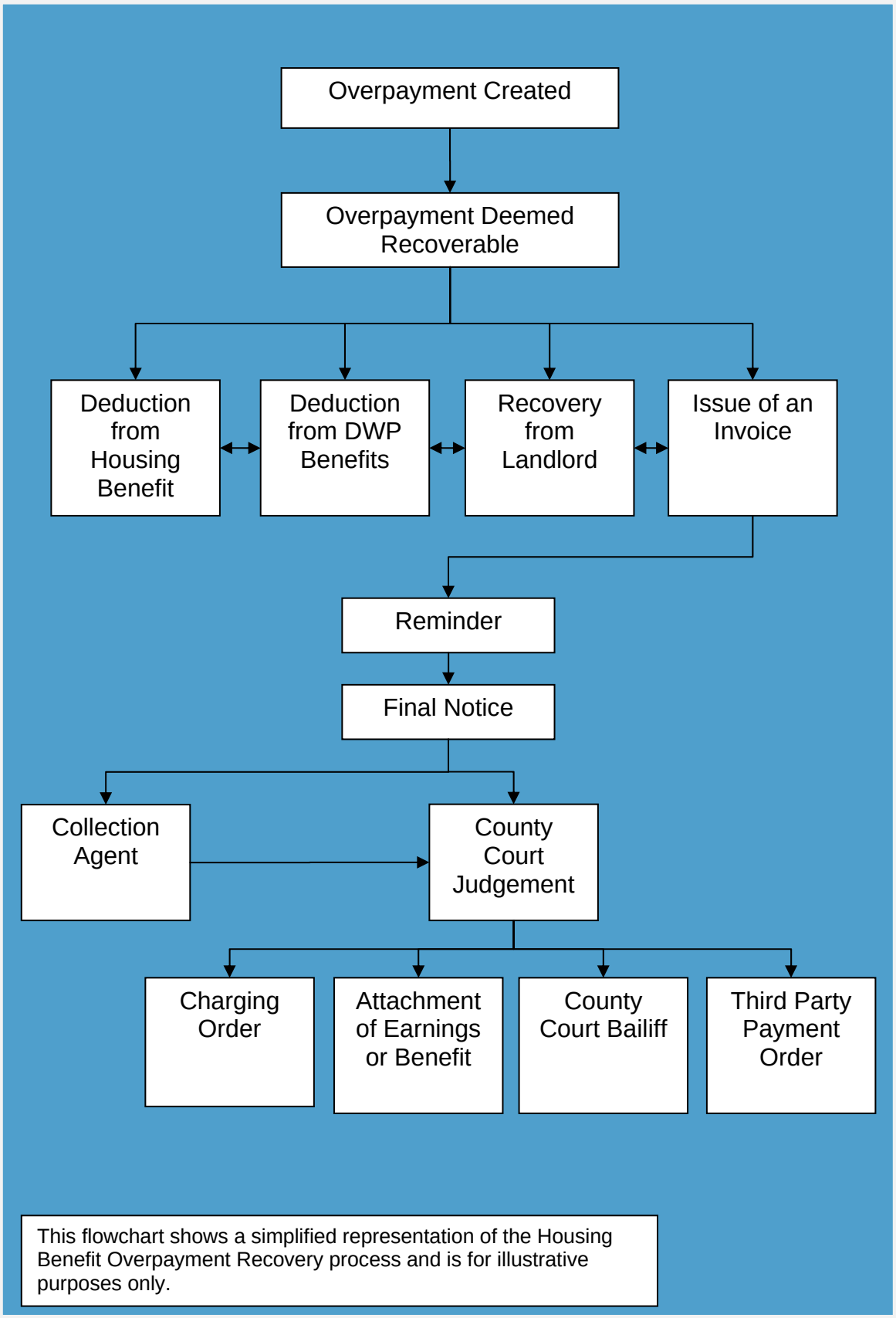
This list is not exhaustive and the Council will seek to enforce the Order via whichever method of enforcement is the most practicable and cost effective.

Adjustment of Council Tax Benefit

Council Tax Benefit is paid to a claimant by way of a credit to the claimant's Council Tax account. Where an adjustment is required which reduces the amount of Council Tax Benefit the Council will give the same consideration to whether the reduction is recoverable as outlined above regarding Housing Benefit.

Where a reduction to Council Tax Benefit is deemed to be recoverable the amount will be debited from the Council Tax account. The resulting outstanding Council Tax will be recovered in the same manner as other sums of Council Tax.

Housing Benefit Overpayment Recovery Process Flowchart



Appendix 5

Sundry Debt Recovery Process

An invoice should be issued as soon as possible after the event giving rise to the charge occurs. All sundry debt invoices will be issued for payment due immediately except where there is a contractual agreement to make payment at agreed intervals (e.g. monthly direct debit subscriptions). All the available payment methods will be stated clearly on the invoice.

At any stage following receipt of the invoice the customer can contact the Council to discuss payment by instalment arrangement if payment in full is not possible for the customer.

If payment is not received within 28 days from the invoice date, and no request is received to consider a payment arrangement, a **first reminder** letter will be sent.

Should payment not be received after the issue of the first reminder and within 50 days of the invoice date, a **second reminder** is sent giving the debtor seven days to pay to avoid the debt progressing to the legal recovery stage.

Should no payment be received within seven days from the date of the second reminder the debt will proceed to the legal recovery stage and be subject to one or more of the following actions:-

1. Referral to the Council's approved **collection agent**, or
2. Issue a **Letter Before Action** giving notice that the debt should be paid within seven days or the debt will become the subject of a County Court action. The Council may then obtain a County Court Judgement against the debtor. Costs and statutory interest may also be added to the debt at this stage.

Once a judgement is obtained the Council may enforce the judgement by applying for:-

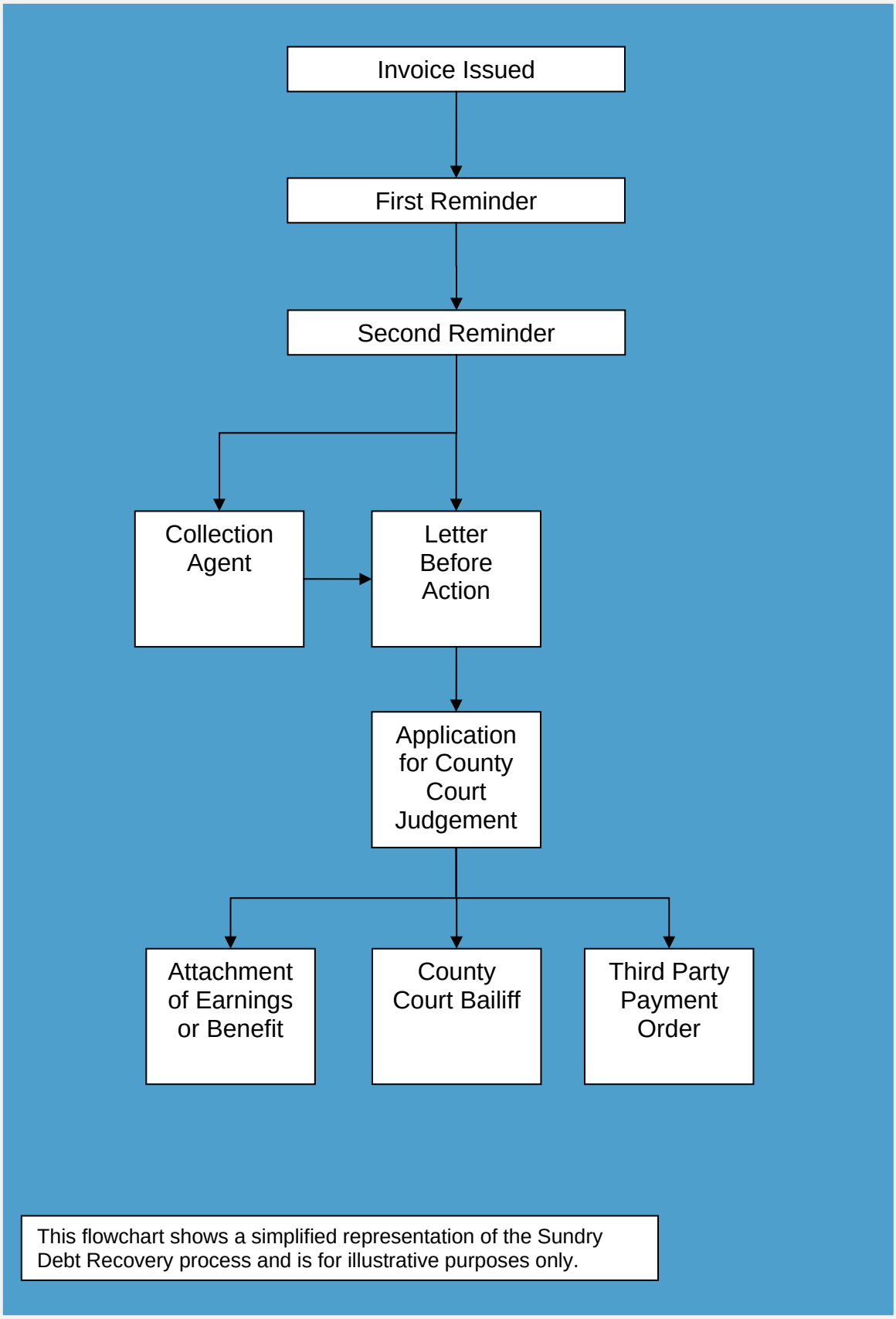
- An Attachment of Earnings Order, or

- A Warrant of Execution against the Debtors Goods (i.e. refer the debt to the County Court's Bailiff), or

- Any of the other enforcement processes available through the County Court that the Council may deem appropriate dependant on the circumstances of the Debtor.

The Council may charge interest on overdue commercial debts in accordance with the Council's Policy for the Charging of Interest on Late Payment of Commercial Debts.

Sundry Debt Recovery Process Flowchart



Appendix 6

Use of Severe Remedies

1.0 Introduction

1.1 This appendix to the Fair Debt Collection Policy sets out the Council's Policy for the use of the following remedies to recover unpaid debts;

- Petitions for bankruptcy or other forms of insolvency
- Charging orders against properties and subsequent orders for sale
- Applications for means enquiries with a view to committal to prison for non payment of local taxes or BID levies

1.2 For ease of reference these actions are collectively referred to as 'severe remedies' throughout this policy.

2.0 Commencement of Proceedings

2.1 No proceedings in respect of a severe remedy shall be commenced without written authorisation from the Severe Remedies Authorisation Panel. The panel shall be comprised of Council officers as determined by the Assistant Director (Revenues, Benefits and Customer Service) and shall consist of at least two officers.

2.2 At least one member of the panel shall be employed at Head of Service level or above and at least one member shall hold a relevant professional qualification (e.g. Institute of Revenues Rating and Valuation or Chartered Institute of Public Finance and Accountancy). Advisory members may be appointed to the panel in respect of specific cases where considered appropriate.

2.3 Commencement of proceedings is defined as;

Insolvency	Issue of a Statutory Demand
Charging Order	Application for an Interim Charging Order
Means Enquiry	Application for a Means Enquiry Summons

3.0 Requests for Authorisation

3.1 Requests for authorisation shall be submitted to the panel in writing and shall incorporate;

A. An accurate history of the origin of the debt and of the attempts made to recover it,
B. Details of any other debts owed to the Council by the same debtor,
C. Information about any past, present, disputed or outstanding benefit claims or any discounts or exemptions that might be relevant,
D. Information about any other disputes in respect of the debt,
E. An assessment of the debtor's assets and of whether they are sufficient to clear the debt if a severe remedy is pursued,
F. An assessment of the prospects of recovering the debt by other means in a reasonable timescale,
G. Sufficient evidence about the debtor's circumstances to support the decision making process,
H. Consideration of whether a debtor's failure to pay and to respond to other recovery measures could arise from a disability (including a mental impairment) with a long-term and substantial effect on normal day-to-day activities,
I. Consideration of whether the debtor's personal circumstances warrant them being protected from the consequences of recovery action,
J. Confirmation that enquiries have been made of the Council's Adult and Community Services Directorate and Children's Services, Schools and Families Directorate to establish if they are aware of any reason that the individual may have difficulty in managing their financial affairs, or of any potential adverse impact on the wellbeing of the individual or a person in their care that may arise from the use of the severe remedies, together with details of any information provided by those services,
K. Details of visits made in an attempt to contact the debtor and of the outcome of the visits,
L. Confirmation that information has been provided to the debtor regarding sources of help and advice on dealing with debt,
M. An assessment of the likely costs that will be incurred by the debtor and the Council if use of the remedy is approved (based on a straight forward case).

4.0 Action to be Taken Prior to Making a Request

4.1 Before making a request to utilise a severe remedy the following actions must be carried out;

4.2 All statutory processes required to be undertaken before the severe remedy can be used must be conducted.

4.3 The debtor must be provided with clear information in simple language about the availability of sources of free information and advice on dealing with debts, with the first visit letter (for example the Citizens Advice Bureaux services, National Debtline etc).

4.4 The debtor must be provided with clear information in simple language about the severe remedies that may be used if they do not take action to resolve the debt. This should include information about the consequence of the severe remedies including the potential cost.

4.5 Enquiries should be made of the Council's Adult and Community Services Directorate and Children's Services, Schools and Families Directorate to establish whether those Directorate's hold any information about the individual that is relevant to the decision, such as their ability to repay the debt, to manage their financial affairs or of the potential for the use of a severe remedy to be detrimental to the individual's wellbeing.

Visits by a Council Officer

4.6 A minimum of three visits should be made by a Council Officer in order to try to establish contact with the debtor. At least one of these visits should be made in the evening or at the weekend if no contact is made on the first two occasions. Where no contact is made a letter should be left inviting the debtor to contact the Council to make an appointment to discuss the debt at either the Council's offices or at the debtor's home.

4.7 Where the debtor's address is beyond a reasonable travelling distance from the Borough's boundary the case should be referred to the severe remedies panel to consider the appropriate and proportionate action to be taken to seek to establish contact with the debtor.

4.8 If no contact is made the visiting officer shall make discrete enquiries with neighbours in order to attempt to identify a way to contact the debtor. However, under no circumstances should details of the reason for the visit be disclosed.

4.9 Where the debtor is a limited company visits are not necessary other than those in connection with the levying of distress. However, prior to the commencement of a severe remedy a letter should be sent to the registered office of the company advising the organisation in simple language of the intention to commence action and the consequences for the organisation of those actions. If the debtor is an unincorporated organisation visits should first be made to the organisation's address. Where this is unsuccessful a visit may be made to the home address of the appropriate officer of the organisation.

4.10 The following information, as a minimum, should be recorded for each visit;

- The date and time of the visit
- A description of the premises and of any other assets which it appears may belong to the debtor

4.11 Where contact is made the following questions should be asked and the answers recorded;

- The name of the person spoken to
- Their date of birth (to avoid any confusion about the person's identity)
- Their confirmation that they owe the debt
- Is the debt disputed in any way and if so on what grounds
- Their proposal for repayment
- Details of their income and expenditure, including the name and address of their employer if they are in employment
- Whether they have any assets that could be used to pay the debt
- Whether they are aware of where to go to seek free advice about their debts
- Whether they have any disabilities or medical conditions that affect their ability to repay the debt or to understand the situation
- Any other information that they consider to be relevant to the debt and its repayment
- Whether the person has any difficulty understanding written communication in English
- Details of other persons resident in the household including their ages and relationship to the debtor
- Whether there are any concerns regarding the debtor's mental capacity.

5.0 Mental Capacity

5.1 In considering the use of a severe remedy due regard must be given to the debtor's mental capacity. In accordance with the Mental Capacity Act 2005 Code of Practice it should be assumed that the debtor has mental capacity unless there are grounds for concern. Where there are grounds for concern the five principles set out in the Code of Practice should be applied.

1. *A person must be assumed to have capacity unless it is established that they lack capacity.*

2. *A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.*

3. *A person is not to be treated as unable to make a decision merely because he makes an unwise decision*

4. *An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.*

5. *Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.*

5.2 Where cause for concern is identified advice should be sought from the Council's Mental Capacity Act expert and this advice should be taken into consideration in considering further action under this Policy.

5.3 In the event that concerns are identified that require further action under the Council's Safeguarding Policy, for example suspicions that a debt has arisen through financial abuse of the debtor, then action to enforce payment should be suspended until the completion of an investigation in accordance with the Safeguarding Policy.

6.0 Approving the Use of Severe Remedies

6.1 The Severe Remedies Authorisation Panel shall consider in each instance whether use of the proposed remedy is a fair and proportionate action giving consideration to the individual circumstances of the case.

6.2 The interests of local residents, businesses and taxpayers shall be taken into consideration by the panel in reaching its decision.

6.3 The panel shall only approve use of the remedy where it is satisfied that the action is fair and proportionate given the particular circumstances of the case.

6.4 The panel's decision will be recorded in writing together with the reasons for reaching the decision.

7.0 Sharing of Information within the Council

7.1 Requests for information from other Council Directorates shall be made using an approved form.

7.2 In sharing personal data for the purposes of this Policy due regard must be given to the requirements of the Data Protection Act and the guidance provided with the approved form. Officers providing information shall do so using the approved form and should be satisfied that information they provide is relevant to consideration of the use of the severe debt enforcement remedy.

Bedford Borough Council
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MK42 9AP

www.bedford.gov.uk

APPENDIX 7

Bailiff Code of Practice

May 2012

BAILIFF CODE OF PRACTICE

This document is the code of conduct for external bailiffs acting on behalf of Bedford Borough Council in the collection of;

- Council Tax
- Non-Domestic Rates (Business Rates)
- Business Improvement District Levy (BID Levies)
- Housing Benefit Overpayments
- Sundry Debts administered by the Council's Finance and Corporate Service Directorate

It is intended to assist them in dealing with the enforcement of all such debts in a manner consistent with legislation, efficiency and effectiveness but also consistent with the Council's approved Fair Debt Collection Policy.

The code of practice shall also be followed by debt collection agencies appointed by the Council to the extent that it is applicable to the service provided.

Where a reference is made to consulting the Council in this document, the bailiff should speak to the Council's Supervising Officer (that is the Court Officer, the Senior Recovery Officer or a more senior officer).

Code of Practice for the Management of Bailiffs employed by Bedford Borough Council for the Enforcement of debts in England & Wales.

1. Bailiff companies and bailiffs contracted by the Council to undertake specified tasks will be required to ensure that they, their employees, contractors, and agents comply with the following code of practice at all times.

2. The bailiff company will ensure that all employees, contractors, and agents will act strictly within the scope of current legislation at all times, and will not commit any illegal act whilst working on behalf of the Council.

3. The bailiff company will ensure that all notices and other documentation left with or sent to the debtor are unambiguous and not misleading. Except where a notice or other documentation is handed to the debtor, it must be enclosed in a sealed envelope addressed to the debtor by name.

4. The bailiff company will ensure that all bailiffs, employees, contractors, and agents have appropriate knowledge and understanding of the relevant legislation, case law, and powers. Where necessary, the bailiff company will ensure that adequate training is undertaken.

5. Bailiffs and employees, contractors, and the agents of the bailiff company will act in a reasonable and courteous manner, and will act in the interests of the Council at all times.

6. The bailiffs and all employees, contractors, and agents must be aware that they represent the Council in their dealings and should act accordingly at all times.

7. The bailiff company will ensure all employees, contractors, and agents maintain an acceptable standard of dress when meeting the public consistent with the provision of a professional service.

8. All bailiffs carrying out the lawful act of distress on goods shall hold a current bailiff's certificate issued by the county court. The bailiff company will ensure that the removal of goods is always directly supervised by a certificated bailiff.

9. The Council will appoint a supervising officer, who shall be a senior member of staff, to liaise with bailiffs and the bailiff company on all matters. The supervising officer and the principal of the bailiff company shall be responsible for the operation of this code of practice and for resolving any complaints from debtors.

10. The bailiff company must establish and maintain an internal complaints procedure overseen by a senior member of staff. The Council's supervising officer shall be responsible for ensuring that any complaints received by the Council from debtors or their authorised representatives are handled efficiently and promptly and in accordance with the Council's complaints procedure.

11. The bailiff company will bring to the attention of the supervising officer cases where it is considered to be inappropriate to distrain upon goods in accordance with the attached "bailiff guidelines", and will seek further instructions before proceeding.

12. The bailiff and the bailiff company will, on returning any unpaid liability orders, report any reason(s) why distraint has not taken place, together with a full history of activity undertaken in respect of the liability order and any information obtained during those activities. The bailiff may only return liability orders to the Council on the basis of 'nulla bona' after diligently attempting to locate and distrain upon goods belonging for to the debtor.

13. The bailiff and the bailiff company shall ensure that all information coming into their possession during the performance of the contract is treated with strict confidence and is not to be used for any purpose other than performance of the contract. All data must be processed in accordance with data protection legislation, and with any guidance issued by the information commissioner. The bailiff company is responsible for putting in place suitable arrangements to ensure the

security of data in its possession at all times and shall only exchange data with the council in a secure manner agreed by the Council.

14. The bailiff company must ensure that its employees use the title "bailiff" only in appropriate work (for instance, not when acting as debt collectors or tracing agents). Bailiffs must not misrepresent their powers, qualifications, capacities, experience, or abilities.

15. The bailiff company must declare all associated interests of companies, associations, and groups to the Council.

16. The bailiff company will undertake to process all instructions received within the time-scale laid down by the Council.

17. The bailiff company will report to the Council progress in respect of any cases which remain outstanding within the timescale laid down by the Council, supplying such information as is required by the Council.

18. The bailiff company will answer all correspondence from debtors within five working days of such being received, wherever possible.

19. The bailiff company will account for monies and return all cases where it is unsuccessful in securing payment to the Council promptly and in accordance with the terms of the contract.

20. The bailiff company must keep and properly maintain a separate client bank account for “Bedford Borough Council local taxation monies” and also a suspense account that records all unidentified payments. The bailiff company must allow reasonable access for the Council's auditors and supervising officer to the records of these accounts.

21. The bailiff company must make available to the council, on request, all correspondence relating to debtors, and any supporting documents and working papers.

22. The bailiff company must hold an agreed amount of professional indemnity insurance to cover the acts and omissions of its employees, contractors, and agents. The bailiff company will satisfy the Council that such insurance is up to date at all times.

23. Copies of the Bedford Borough Council’s Bailiff Code of Practice (including bailiff guidelines) must be made available on the Council’s website (www.bedford.gov.uk). A copy of the code must be given to each person who requests a copy, upon payment of the cost of printing the document. Bedford Borough Council must also send a copy to the local office of the Citizens Advice Bureau and other local advice agencies.

24. The bailiff company shall ensure that goods in its possession (or in the possession of its employees, contractors, and agents) are covered by

adequate insurance, are held securely and shall ensure that goods are handled in such a way that they do not suffer any damage.

25. Bedford Borough Council reserves the right to direct, instruct, take action or make arrangements in any case whether or not the liability order has been referred to the bailiff.

26. The bailiff company shall ensure that debtors are able to contact the company during reasonable office hours by telephone and should publicise the appropriate telephone number on all documentation. Additional facilities, by which the company may be contacted, such as e-mail or text, may be offered but should not replace a telephone service. The telephone service offered must be one that can be dialed on an ordinary telephone tariff (i.e. it must **not** be a premium rate number).

27. The bailiff and employees of the bailiff company shall liaise directly with advice agencies where the agency is representing a debtor.

28. If the Council or the bailiff company has cause to be concerned that a debtor, or their associates, in respect of whom a liability order has been referred to the company, may pose a risk to the health and safety of an employee of the Council or the bailiff company they shall ensure that the other party is informed promptly of the risk.

BAILIFF GUIDELINES

1. The following guidelines must be adhered to when enforcing the payment of debts.

2. Advance notice may be given to the debtor of the bailiff's intention to make an initial call, unless efficient use of the bailiff's time or other circumstances warrant a call without notice. Follow-up calls may be made with or without notice.

3. The bailiff will try to contact the debtor personally. If this is not possible, the bailiff will speak to the debtor's partner or other responsible adult to establish when the debtor is likely to be at home. The bailiff will not enter the debtor's premises if it appears that the only people present are young people under the age of 18, but in such circumstances the bailiff may enquire as to when the debtor is likely to be at home. The bailiff should take reasonable steps to ensure that he/she is speaking directly with the debtor, before identifying himself or herself as a bailiff. The bailiff should seek to establish the identity of all persons present, and inform the debtor (when present) of the purpose of the visit, and explain the powers of the bailiff. The absence of the debtor should not automatically prevent the bailiff from levying distress (particularly where the debtor is a business), but the bailiff will be expected to take all relevant circumstances into account before deciding whether to levy

distress. The bailiff must not reveal the purpose of his or her visit to third parties. Confidentiality must be maintained at all times and particular care should be taken on business premises to avoid, as far as possible, customers and clients of the debtor from discovering the purpose of the visit. Where enquiries are necessary to establish the debtor’s current address, the bailiff shall make enquiries discreetly and without disclosing the reason for the visit or enquiry.

4. The bailiff will at all times carry full and proper photographic identification and produce such without being asked whenever attending the debtor's property, and will also show such identification to any person who has reason to require it. On no account should the bailiff represent himself or herself as being an officer of Bedford Borough Council or the court. The bailiff should identify himself or herself as an employee of the bailiff company and state that he or she is working on behalf of Bedford Borough Council. It is a legal requirement that bailiffs acting on behalf of a local authority are authorised to so act. The bailiff must carry the appropriate authorisation at all times and produce it on request.

5. The nature of the work demands that the bailiff should adopt a firm but correct attitude with debtors and other people they contact in the course of their duties. The bailiff is to be polite in his or her dealings with the public and must at all times act in a dignified and correct manner. The bailiff’s approach to debtors should be firm and confident but never arrogant. The bailiff must never be rude, discourteous, or patronising. Should the debtor dispute the liability, the bailiff will contact the Council before proceeding further. Where required, the bailiff will provide the debtor with a telephone number that can be used to contact the Council during normal office hours.

6. The bailiff should promptly report any threats or other matters of concern to the police, to the bailiff company and to the Council’s supervising officer.

8. The bailiff’s initial visit will be with the intention of levying distress. If the debtor tenders payment in full including all costs incurred, the bailiff must not distrain but may still charge the debtor the relevant fee. When the bailiff has distrained, the debtor should normally be invited to sign a walking possession agreement. If the debtor refuses to sign, or refuses to make payment, or defaults on payment, the goods should (subject to contrary instructions from the Council) be removed at the earliest opportunity. The bailiff must not remove goods without first consulting the Council’s supervising officer.

9. The debtor must immediately be given an acknowledgement of payment or an official receipt for all payments made in person. All payments must be handed in for banking no later than the following working day. Where payment is made by post or left at an office which is closed, an official receipt must be sent within 3 working days where a

prepaid self addressed envelope accompanies the payment. The bailiff company shall offer a convenient method of payment for example, via the Post Office, or other payment network, by telephone or by Internet.

10. The bailiff will be cautious in all cases and have regard to the circumstances of the case. The bailiff will take no further action and will refer back to the supervising officer any cases where it appears the debtor may be vulnerable. The Council shall inform the bailiff company of circumstances where the debtor may be considered to be vulnerable; these are listed below. Any other cases considered suitable by the bailiff for special consideration should be referred back to the Council's supervising officer. Where there is any doubt about whether this clause applies, the supervising officer should be consulted before any enforcement action is taken.

Guidance on Vulnerable Cases

Extreme care and discretion should be taken when dealing with persons falling into the following groups which may be considered to be vulnerable for the purposes of this code of practice. Where the following circumstances are encountered, the approach expected by Bedford Borough Council is outlined below:-

- **Elderly Persons**

  An elderly person is not necessarily vulnerable and great many elderly people are financially secure and both mentally and physically healthy. However, some elderly people are frail, confused, ill, and living on fixed and limited incomes and, therefore, are considered to be vulnerable.

  If it is evident that the debtor either falls into the latter categories no attempt to levy or remove goods should be made without first consulting the Council.

- **Disabled Persons**

  A person with a disability is not necessarily vulnerable for the purposes of this Code of Practice. However, where the disability affects the persons ability to deal with their financial affairs they should be considered to be vulnerable.

  Regardless of the severity of the disability, the bailiff should never remove or levy distress on goods that are necessary to the wellbeing of the person due to their disability. If it is evident that the debtor has a disability that is anything other than a relatively minor disability, no action should be taken without consulting the Council.

- **Persons with Mental Impairment or Learning Difficulties**

  If it is evident that the debtor has mental impairment or learning difficulties they should be considered to be vulnerable and no action should be taken without consulting the Council.

- **Persons Experiencing Serious Illness, including Mental Illness**

  Where the debtor (or the debtor's partner) appears to be suffering from any condition which is serious or life threatening they could be considered to be vulnerable. No action should be taken if the debtor (or the debtor's partner) is suffering from any condition which is serious, life threatening, or where the bailiff has concern that further action may be seriously detrimental to the person's welfare.

- **A Person Recently Bereaved**

  A person suffering the recent bereavement of a close relative could be considered to be a vulnerable person.

  Bereavement affects different people in different ways and the bailiff will need to exercise discretion in determining whether a person that has experienced recent bereavement is vulnerable based on the individual circumstances. Where the debtor (or the debtor's partner) is obviously still extremely distressed the bailiff should seek guidance from the Council before proceeding even though some time may have passed.

- **Lone Parents**

  A lone parent is not necessarily a vulnerable person and it is recognised that some lone parents are financially secure. However, lone parents, and in particular those with very young children, may have difficulty in undertaking employment and, therefore, rely on Welfare Benefits. The bailiff should exercise discretion and consult the Council before taking action where there is reason to believe that a lone parent may be vulnerable.

- **Pregnancy**

  A person in the later stages of pregnancy may find dealing with serious financial issues stressful, particularly if they are not supported by a partner, or if they are on a low income or benefits. This may be compounded by any additional essential expenditure due to the pregnancy or birth of a child.

  Where it is evident that a debtor, or their partner, is pregnant the bailiff should take care to avoid causing stress as this could be detrimental to the person's wellbeing. Where the bailiff has concerns that further

action may be detrimental to the persons welfare they should seek further advice from the Council.

- **Persons receiving Income Support, Job Seeker's Allowance, Employment and Support Allowance or Pension Credit (or where a benefit application has been made but not yet determined)**

  Those on Income Support, Job Seeker's Allowance, Employment and Support Allowance or Pension Credit are, by definition, vulnerable as they are living on a subsistence level benefit.

  Generally the bailiff should withdraw automatically where the debtor provides evidence they are in receipt of Income Support or Job Seekers Allowance and advise the Council immediately, as alternative recovery remedies are available to the Council (e.g. attachment of benefits). In this event, the liability order should be returned to the Council. If it appears to the bailiff that the debtor may be claiming benefit fraudulently the bailiff should contact the Council to report their concerns before taking any action. If the debtor is awaiting the result of a benefit application, the bailiff should contact the Council before taking any action.

  In some circumstances the Council may request the bailiff company to take enforcement action, for example where the amount that may be deducted from benefits is less than the accruing liability. In such cases the Council will provide explicit instructions to the bailiff company.

- **Unemployed Persons**

  Unemployment does not automatically mean the debtor is vulnerable. For example a person may have received a substantial redundancy payment and be financial secure in the short-term. However, loss of employment may result in serious financial difficulties if a person is suddenly unable to meet their existing financial commitments.

  A person who has recently become unemployed after a long period of employment may be unfamiliar with processes for claim benefits and may need additional assistance to understand their entitlements.

  If it is evident from the bailiff's observation of the debtor's circumstances that the debtor may be vulnerable, no action should be taken without consulting the Council.

- **A Person who has Difficulty Understanding English**

  Where a person does not understand either spoken or written English they should be considered to be vulnerable, particularly if they do not have support from family members who can speak and read English.

Where the bailiff has reason to believe a person may have difficulty understanding English this should be reported to the Council who will provide advice on how to proceed.

- **Persons Aged Under 18**

  It is unlikely that a person aged under 18 years will owe any sums to the Council, however, it is possible that a person may assist or care for a parent or other older person and could contact the Council on their behalf. A person aged under 18 years may be the only person at home when an enforcement visit is made. Anyone aged under 18 years should automatically be considered to be vulnerable.

- **A person that has difficulty reading or writing**

  A person who has difficultly reading or writing should usually be regarded as vulnerable because they will have difficulty in understanding written notices. People who have difficultly reading or writing are often reluctant to reveal their difficulties and where there is concern that a person has such difficulties the issue should be addressed in a sensitive manner.

  Where the bailiff has reason to believe a person may have difficulty reading or writing this should be reported to the Council who will provide advice on how to proceed.

- **Cases where the welfare of children would be put at risk**

  If it appears to the bailiff that the welfare of young children may be put at risk by the bailiff's actions, or where the bailiffs has reason to be concerned about the welfare or safety of a child, the concerns should be reported to the Council immediately who will provide advice on how to proceed.

- **People who have experienced recent marital break-up**

  If it is evident to the bailiff that non-payment may be due to a recent marital break-up, the bailiff should consult with the Council.

- **Possible Job Losses**

  In any case where there is evidence that job losses may result through the removal of goods, the bailiff must consult the Council before removing goods.

- **Other Unusual Circumstances**

  If the bailiff finds unusual circumstances that are not covered by any of the above categories, the bailiff should take no action without consulting the Council.

11. Where the bailiff levies distress with a view to securing payment in the future or over an agreed period of time, the debtor should be invited to sign a walking possession agreement which details the arrangement made regarding payment. The bailiff may make payment arrangements to collect the full outstanding balance in the shortest time possible having regard to the debtor's ability to pay. Only in exceptional circumstances, and only with the agreement of the Council's supervising officer, should an arrangement to pay be accepted which exceeds a period of twelve months.

12. The purpose of the bailiff's visit is to distrain. Where distress is not levied, and no immediate payment is obtained, the bailiff should try to establish whether the debtor is in employment, and if so, the name and address of the employer; and if unemployed, whether claims have been made for state benefits, Council Tax Benefit or Housing Benefit.

13. All documents proposed to be left with or posted to debtors must be agreed by the Council before use. All documents must be correctly completed in a legible manner. All documents must be signed and carry the appropriate reference numbers (including the Council's Account Number). Pre-printed stationery must not be altered or added to in any way except to advise of proposed subsequent visits, balances outstanding, etc. Any documentation that the bailiff leaves at the premises, and which has not been handed to the debtor, must be in a sealed envelope addressed to the debtor.

14. The bailiff may distrain on the debtor's goods wherever they are found in England and Wales, subject to the Council's instructions. The bailiff must not remove goods without first consulting the council.

15. The bailiff company should seek to avoid the necessity for forced entry to premises. In the event that such action is considered unavoidable the bailiff company shall ensure, it is conducted lawfully, any damage is kept to a minimum and that the premises are secured before departure. Forced entry must not take place without prior agreement by the Council. It is the bailiff's responsibility to establish who owns goods on which it is proposed to levy distress. The bailiff must not remove goods that do not belong to the debtor. Where ownership of goods cannot be conclusively established the bailiff should not remove goods where there is good cause to believe they do not belong to the debtor. In the event goods are removed that are subsequently proved to not belong to the debtor the bailiff company shall make arrangements to return the goods to the rightful owner at the company's expense. In the event such goods have been sold then the bailiff company should fully compensate the rightful owner for the loss of the goods. The bailiff must not remove goods that are specified in the relevant legislation. Furthermore, the following items must not be removed from domestic premises:

In the case of Council Tax debts only:

- Tools, books, vehicles, and other items of equipment that are necessary to the debtor for personal use in the course of trade, employment, profession, or vocation. (A tool of trade is anything essential to the defaulter to carry out his trade, employment, profession, vocation, etc.)

For all debts:

- Cooking appliances, where this would leave the debtor and his/her family with no means of preparing a hot meal.
- Heating appliances, where this would leave the premises without adequate heating.
- Refrigerators, where this would leave the debtor and his/her family with no means of keeping food cold.
- Food necessary to meet the basic needs of the debtor and his/her family.
- Bedding or household linen necessary for satisfying the basic domestic needs of the debtor and his/her family.
- Beds and chairs, where this would leave the premises without one bed and one chair for each occupant.
- Any other goods necessary for satisfying the basic domestic needs of the debtor and his family.
- Children's toys and other children's items, primarily for the use of any child who is a member of the debtor's household.
- Articles required for the care or upbringing of a child who is a member of the debtor's household.
- Medical aids or medical equipment reasonably required for use of the debtor or any member of the debtor's household.
- Goods the removal of which will have a serious detrimental effect on the health of the debtor or a member of the debtor's household.
- Books or any other articles reasonably required for the education or training of the debtor or any member of the debtor's household not exceeding in aggregate value £500.
- Articles required for safety reasons in the home.
- Items purchased through loans or grants advanced from the Social Fund.
- Vehicles or other means of transport where this would genuinely jeopardise the debtor's employment, but taking into account the availability of public transport.

Where there is any doubt regarding the removal of any of the above goods, the bailiff should contact the Council before any further enforcement action is taken.

16. The Council will provide the bailiff company with a schedule of cases where liability orders have been obtained and a letter of authority to act on the Council's behalf. In all cases where distraint takes place,

whether or not walking possession is obtained, the bailiff shall produce this authority to any person having good reason to require sight of it. In all cases, the appropriate documentation required by regulations is to be left at the premises or given to the debtor.

17. Goods may be removed by the bailiff in person or by contractors acting under the bailiff's direct supervision. All goods must be clearly labeled so they can be traced to the debtor. Due care must be exercised to avoid unnecessary damage and goods are to be stored safely pending either their collection by the debtor on payment, or sale. The bailiff company is responsible for ensuring that the debtor's goods are adequately insured whilst in possession of the bailiff or any agent or contractor engaged by the bailiff.

18. The bailiff or the person personally supervising the removal of goods must give the debtor where personally present, or leave in a prominent place at the premises an inventory listing each of the goods removed. In the event of goods being removed for auction, the bailiff company must advise the debtor in writing of the date, time, and place of the auction sale at least 48 hours prior to the auction sale. The bailiff should place a realistic reserve on high value goods before putting them into auction. High value goods means any single item with an estimated value of £500 or more (for Council Tax purposes) or £1,000 or more (for Non-Domestic Rates or BID Levy purposes).

19. Unless otherwise specified, a minimum of three unsuccessful visits to the debtor's address is required before the case is referred back to the Council. Two visits may only take place on the same day where the bailiff has reason to believe after the first visit that the debtor will be present at a later time. Otherwise, the subsequent visit must take place on a different date.

20. Where no contact has been made following a visit(s), at least one visit should be made to the debtor's address outside normal office hours (i.e. Monday to Friday 9am-5pm) before referring the debt back to the Council.

21. The bailiff must not respond to verbal abuse under any circumstances. The bailiff is expected to maintain a calm and professional manner at all times and not allow any personal feelings to interfere with his or her conduct or judgement.

22. Physical confrontation should be avoided. If the bailiff suspects that a breach of the peace is likely, he or she should always contact the police.

23. The bailiff must never consume alcohol or drugs (other than prescription or routine medication) whilst working and must never be under the influence of alcohol or drugs whilst working.

24. In appropriate circumstances, the bailiff should issue ‘nulla bona’ certificates to the Council within 12 weeks of commencing action.

25. Unless circumstances are exceptional, the bailiff must not visit to enforce a liability order (i) outside the hours between 8.00am and 8.00pm or (ii) on Sundays or on bank holidays. Approval should be sought from the Council’s supervising officer to make visits outside these times.

26. Unless circumstances are exceptional, the bailiff must not remove goods from domestic premises during the period from 18th December to 1st January inclusive. The bailiff should also be sensitive to other circumstances where there is information that indicates that the debtor is observing a religious holiday.

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Collection of council tax arrears good practice protocol

Council tax payers will receive a better level of service if billing authorities and local debt advice agencies work closely together.

This good practice protocol makes a number of suggestions on how existing relations can be strengthened and improved. It has been developed as a result of partnership work between the national bodies representing advice agencies and local government throughout England and Wales. It reflects best practice at local level and is intended to be an aid towards regular liaison on practices and policy concerning council tax arrears collection. By setting down clear procedures and keeping them regularly under review, all parties can ensure that cases of arrears are dealt with quickly and realistically whilst complaints are handled efficiently.

This partnership approach is even more important at a time of economic uncertainty in order to ensure that taxpayers are able to pay their council tax bills on time, get the benefits to which they are entitled and those in financial difficulty get high quality debt advice. The intention is to ensure that council tax arrears are dealt with quickly, effectively and realistically.

Approved by

Local Government Association

Partnership

The following items cover effective liaison between local authorities and advice agencies.

- Local authorities and advice agencies should agree to meet regularly to discuss practical and policy issues with a recommendation to meet quarterly at local authority officer level and annually with elected members.
- All parties should have dedicated contacts accessible on direct lines and by electronic means so that issues can be taken up quickly.
- All parties should promote mutual understanding by providing training workshops and/or exchange visits so that those involved understand the issues facing respective organisations.
- Vulnerable people: local authorities and advice agencies should work together to develop a fair collection and enforcement policy highlighting examples of vulnerable people and specifying clear procedures about how they should be dealt with. Contractual arrangement with bailiffs should specify procedures for the council to take back cases involving vulnerable people.
- Local authorities should consider informal complaints as evidence of problems with collection or enforcement with bailiffs. Debtors may be afraid to complain formally where bailiff activity is ongoing. Informal complaints received from advice agencies can indicate problems worthy of further investigation.

Information

Literature concerning council tax collection and recovery should be reviewed as part of liaison work between local authorities and advice agencies.

- Publicise debt advice contact details on literature and council tax notices. Local Authorities can provide council tax payment plans to help people budget. Advice agencies can help by promoting the need for debtors to contact their local authority as soon as possible in order to agree payment plans. Work together to ensure that the tone of letters is not intimidating and encourages prompt engagement by council tax payers experiencing financial difficulties.
- Local authorities should consider providing literature addressing any likely concerns council tax debtors involved in the recovery process may have on bailiffs and enforcement. Information could cover charges bailiffs are allowed to make by law, how to complain about bailiff behaviour or check bailiff certification and further help available from the local authority or advice agencies.
- All parties should work together to promote engagement by council tax payers. Include information on how bills can be reduced through reliefs, exemptions and council tax benefit, how tax payers should contact the local authority if they experience financial hardship and the consequences of allowing debts to accumulate. Information should be made available on local authority and advice agency websites and available at offices of relevant agencies. This is an opportunity for joint campaign work.
- Promote different payment dates within the month as options available to council tax payers. This can allow people to budget more effectively for council tax when they have the money.

Recovery

If a council tax bill is not paid then the recovery process comes into play. The first stage of the recovery process will involve the billing authority obtaining a liability order from the courts. While authorities strive to make contact with a debtor the first point of contact often occurs only when a bailiff visits the premises. The following items should be considered to ensure an appropriate response.

- Local Authorities should work in partnership with advice agencies on the content of all documents produced by the billing authority and agents acting on its behalf which are part of the enforcement process. This should ensure that the rights and responsibilities of all parties are clearly set out and understood.
- Recovery officers should provide the debtor with a contact number should they wish to speak to the billing authority.
- All charges associated with recovery should be kept regularly under review to ensure they are reasonable. Bailiffs employed by billing authorities should only make changes in accordance with council tax collection and enforcement regulations.
- Consider the level of debt (inclusive of liability order fees) before bailiff action is taken.
- Billing authorities will have varying definitions of a vulnerable person/household. Recovery action will be referred to the billing authority where these criteria are found to have been met.
- Find out whether the debtor has outstanding claims for council tax benefit or housing benefit which are contributing to arrears. Recovery can be suspended once it is established that a legitimate claims is pending.
- Billing authorities should prioritise direct deduction from benefits or attachment of earnings in preference to using bailiffs. This avoids extra debts being incurred by people who may already have substantial liabilities.
- Ensure procedures exist for debt advisors to negotiate payments on behalf of the taxpayer at any point in the process including when the debt has been passed to the bailiff. In some cases the debtor may only, in practice, contact an advice agency following a visit from the bailiff.
- Set down, as part of contractual arrangements, a clear procedure for people to report complaints about recovery action. Billing authorities will regularly monitor the performance of those recovering debts on their behalf and ensure that contractual and legal arrangements are adhered to.
- A key part of the recovery is treating each case on its merits. Arrangements need to be affordable and sustainable while ensuring that the debt is paid off within a reasonable period.

For more copies of this protocol visit:
www.citizensadvice.org.uk/pdf-ct-protocol.pdf

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Ministry of JUSTICE

National Standards for Enforcement Agents

January 2012

Contents

Introduction	2
Terms used	2
Creditors' Responsibilities	3
Professionalism and conduct of the enforcement agent	4
Statutory or Financial Requirements for Enforcement Agencies	5
Training and Certification	6
Complaints/Discipline	6
Information and confidentiality	7
Times and Hours	8
Goods	8
Vulnerable situations	9
Professional Organisations	10

This information is also available on the Ministry of Justice website: **www.justice.gov.uk**

Introduction

These standards are intended for use by all enforcement agents, public and private, the enforcement agencies that employ them and the major creditors who use their services. Private sector enforcement agents who are recovering debts owed to the public sector perform the vast majority of enforcement work, and this document has for the first time established a set of common standards to cover this activity. In order to improve the public's perception of the profession, enforcement agents and those who employ them, or use their services, must maintain high standards of business ethics and practice.

This national guidance does not replace local agreements, existing agency codes of practice or legislation; rather it sets out what the Ministry of Justice, those in the industry and some major users regard as minimum standards.

We recognise this document is not legally binding, but offer it as a helpful tool for the industry and for creditors which, it is hoped, will inform their own arrangements and against which they may benchmark their professional standards.

These standards have been endorsed by the Civil Enforcement Association (CIVEA) and the High Court Enforcement Officers Association (HCEOA)

Terms used

In this document we have used the following terms:

- **Creditor:** for these standards which identify some responsibilities for creditors we include - a local authority, major or frequent judgment creditors in the civil courts, Government Departments and HM Courts and Tribunals Service to whom financial penalties are paid, and landlords undertaking distress for rent procedures.
- **Debtor:** we mean a person who owes a sum of money - this may be a judgment debt or a criminal financial penalty fine which is in default or a liability order. The debtor should behave lawfully and is encouraged to co-operate with the enforcement agent. The term “debtor” where appropriate and applicable, also covers individuals who are being wrongly pursued for a debt in respect of which they are not the actual debtor.
- **Enforcement:** in this document we mean the lawful process of warrant or writ execution, distraint and levying on goods.

- **Enforcement Agency:** here we mean the business that employs enforcement agents, unless specifically indicated (where different arrangements exist); we also include those public sector organisations that have in-house enforcement agents.
- **Enforcement Agent:** we mean someone who is responsible for the enforcement of court orders against goods (warrants of distress and execution) or the person (arrest warrants); we include those employed in the public and private sector, bailiffs, High Court Enforcement Officers and distrainors.

Creditors' Responsibilities

So far as creditors are concerned, the primary purpose of this guidance is to draw their attention to their responsibilities when instructing and dealing with enforcement agents/agencies to recover debts on their behalf.

- In order for the enforcement process to work effectively, creditors must be fully aware of their own responsibilities. These should be observed and set out in terms of agreement with their enforcement agent/agency. They should consider carefully any specific requirements for financial guarantees etc so that these are adequate, fair and appropriate for the work involved.
- Creditors must not seek payment from an enforcement agent or enforcement agency in order to secure a contract.
- Creditors must notify the enforcement agency of all payments received and other contacts with the debtor.
- Creditors have a responsibility to tell the debtor that if payment is not made within a specified period of time, action may be taken to enforce payment.
- Creditors agreeing the suspension of a warrant or making direct payment arrangements with debtors must give appropriate notification to and should pay appropriate fees due to the enforcement agent.
- Creditors must not issue a warrant knowing that the debtor is not at the address, as a means of tracing the debtor at no cost.
- Creditors must provide a contact point at appropriate times to enable the enforcement agent or agency to make essential queries particularly where they have cause for concern.

- Creditors should inform the enforcement agency if they have any cause to believe that the debtor may present a risk to the safety of the enforcement agent.

Professionalism and conduct of the enforcement agent

- Enforcement agents must act within the law at all times, including all defined legislation and observe all health and safety requirements in carrying out enforcement. They must maintain strict client confidentiality and comply with Data Protection legislation and, where appropriate the Freedom of Information Act.
- Enforcement agents must not be deceitful by misrepresenting their powers, qualifications, capacities, experience or abilities, including, but not restricted to;
  - Falsely implying or stating that action can or will, be taken when legally it cannot be taken
  - Falsely implying or stating that a particular course of action will ensue before it is possible to know whether such action would be permissible
  - Falsely implying or stating that action has been taken when it has not
- Enforcement agents must not act in a threatening manner when visiting the debtor by making gestures or taking actions which could reasonably be construed as suggesting harm or risk of harm to debtors.
- Enforcement agents should always produce relevant identification to the debtor, such as a badge or ID card, together with any written authorisation to act on behalf of the creditor (in appropriate debt types).
- Enforcement agents, for the purpose of distress or execution shall, without the use of unlawful force, gain access to the goods. The enforcement agent will produce an inventory of the goods seized and leave it with the debtor, or at the premises, with any other documents that are required by regulations or statute.
- Enforcement agents must carry out their duties in a professional, calm and dignified manner. They must dress and speak appropriately and act with discretion and fairness.

- Enforcement agents must not act in a way likely to be publicly embarrassing to the debtor, either deliberately or negligently (that is to say through lack of care)
- Enforcement agents must not discriminate unfairly on any grounds including those of age, disability, ethnicity, gender, race, religion or sexual orientation.
- In circumstances where the enforcement agency requires it, and always where there have been previous acts of, or threats of violence by a debtor, a risk assessment should be undertaken prior to the enforcement agent attending a debtor's premises.

Statutory or Financial Requirements for Enforcement Agencies[1]

- Enforcement agencies should ensure that audited accounts are available on request, where it is appropriate that these are kept. An annual audit of the agency's accounts by independent accountants should be undertaken at least once a year for businesses where this is appropriate.
- Enforcement agencies must comply with statutory obligations, for example, the Companies Act, Value Added Tax, Inland Revenue provisions, Data Protection, Health & Safety etc.
- A separate account for monies due to the creditor should be maintained and accurate books and accounts should be kept and made available to establish monies owed to the creditor.
- Enforcement agencies must keep a complete record of all financial transactions in whatever capacity undertaken.
- Enforcement agencies must maintain suitable and comprehensive insurance cover for both professional indemnity and other risks including employer's liability and public liability.

[1] Separate provisions regarding financial accounting and insurance may apply to public sector organisations who directly employ their own enforcement agents

Training and Certification

- Enforcement agencies must ensure that all agents, employees and contractors are provided with appropriate training to ensure that they understand and are able to act, at all times, within the bounds of the relevant legislation. This training should be provided at the commencement of employment and at intervals afterwards to ensure that the agent's knowledge is kept up to date.
- Professional training/assessment should be to an appropriate standard for example CIVEA training and examination or other externally accredited courses such as IRRV and City and Guilds or membership of the High Court Enforcement Officers Association.
- Enforcement agencies must ensure that legislation restricting the enforcement activity to certificated bailiffs is complied with[2]
- Enforcement agencies must ensure that all employees, contractors and agents will at all times act within the scope of current legislation, i.e. The Companies Act, VAT, Inland Revenue provisions, Data Protection, Health and Safety etc, and have an appropriate knowledge and understanding of it and be aware of any statutory obligations and provide relevant training.
- Enforcement agents should be trained to recognise and avoid potentially hazardous and aggressive situations and to withdraw when in doubt about their own or others' safety.

Complaints/Discipline

- Enforcement agencies must operate complaints and disciplinary procedures with which agents must be fully conversant.
- The complaints procedure should be set out in plain English, have a main point of contact, set time limits for dealing with complaints and an independent appeal process where appropriate. A register should be maintained to record all complaints.
- Enforcement agents/agencies are encouraged to make use of the complaints and disciplinary procedures of professional associations such as *The Civil Enforcement Association* or the *High Court Enforcement Officers Association*.

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[2] *Distress for Rent Rules 1988*

- The enforcement agent must make available details of the comments and complaints procedure on request or when circumstances indicate it would be appropriate to do so.

Information and confidentiality

- All notices, correspondence and documentation issued by the enforcement agent/agency must be clear and unambiguous and to the satisfaction of the creditor avoiding unnecessary and unhelpful use of legal and technical language
- On returning any un-executed warrants, the enforcement agent should report the outcome to the creditor and provide further appropriate information, where this is requested and paid for by the creditor.
- All information obtained during the administration and enforcement of warrants must be treated as confidential.
- Enforcement agents should provide clear and prompt information to debtors and where appropriate, creditors.
- Enforcement agents should, so far as it is practical, avoid disclosing the purpose of their visit to anyone other than the debtor. Where the debtor is not seen, the relevant documents must be left at the address in a sealed envelope addressed to the debtor.
- Enforcement agents will on each and every occasion when a visit is made to a debtor's property which incurs a fee for the debtor, leave a notice detailing the fees charged to date, including the one for that visit, and the fees which will be incurred if further action becomes necessary. If a written request is made an itemised account of fees will be provided.
- Enforcement agents will clearly explain and give in writing, the consequences of the seizure of a debtor's goods and ensure that debtors are aware of the additional charges that will be incurred.

Times and Hours

- Enforcement should not be undertaken on Sundays, on Good Friday or on Christmas Day, unless the court specifically orders otherwise or in situations where legislation permits it.
- It is recommended that enforcement should only be carried out between the hours of 6.00am and 9.00pm or at any time during trading hours, existing legislation must be observed.
- Enforcement agents should be respectful of the religion and culture of others at all times. They should be aware of the dates for religious festivals and carefully consider the appropriateness of undertaking enforcement on any day of religious or cultural observance or during any major religious or cultural festival.

Goods

- Enforcement agents must only take goods in accordance with the appropriate regulations or statute. In addition creditors may agree other restrictions with agents acting on their behalf.
- Enforcement agents must ensure that goods are handled with reasonable care so that they do not suffer any damage whilst in their possession and should have insurance in place for goods in transit so that if damage occurs this is covered by the policy.
- Enforcement agents should not remove anything clearly identifiable as an item belonging to, or for the exclusive use of a child (person under the age of 16).
- A receipt for the goods removed should be given to the debtor or left at the premises.
- Enforcement agents should take all reasonable steps to satisfy themselves that the value of the goods impounded in satisfaction of the judgment is proportional to the value of the debt and charges owed.

Vulnerable situations

- Enforcement agents/agencies and creditors must recognise that they each have a role in ensuring that the vulnerable and socially excluded are protected and that the recovery process includes procedures agreed between the agent/agency and creditor about how such situations should be dealt with. The appropriate use of discretion is essential in every case and no amount of guidance could cover every situation, therefore the agent has a duty to contact the creditor and report the circumstances in situations where there is evidence of a potential cause for concern. If necessary, the enforcement agent will advise the creditor if further action is appropriate. The exercise of appropriate discretion is needed, not only to protect the debtor, but also the enforcement agent who should avoid taking action which could lead to accusations of inappropriate behaviour.

- Enforcement agents must withdraw from domestic premises if the only person present is, or appears to be, under the age of 18; they can ask when the debtor will be home - if appropriate.

- Enforcement agents must withdraw without making enquiries if the only persons present are children who appear to be under the age of 12.

- Wherever possible, enforcement agents should have arrangements in place for rapidly accessing translation services when these are needed, and provide on request information in large print or in Braille for debtors with impaired sight.

- Those who might be <u>potentially</u> vulnerable include:
  - the elderly;
  - people with a disability;
  - the seriously ill;
  - the recently bereaved;
  - single parent families;
  - pregnant women;
  - unemployed people; and,
  - those who have obvious difficulty in understanding, speaking or reading English.

Professional Organisations

Organisation	Contact
Civil Enforcement Association 513 Bradford Road, Batley, West Yorkshire WF17 8LL	Tel: 0844 893 3922 Fax: 0844 854 6322 Email: admin@civea.co.uk
High Court Enforcement Officers' Association 50 Broadway, London SW1H 0RG	Tel: 020 7152 4017 Fax:020 7152 4001 Email:enquiries@hceoa.org.uk

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