



# **CORPORATE FAIR DEBT POLICY**

**June 2011**

## Table of Contents

<b>Vision and objectives</b>	<b>2</b>
<b>1. Introduction</b>	<b>2</b>
<b>2. Policy Aims</b>	<b>3</b>
<b>3. Fair Debt Collection</b>	<b>3</b>
<b>4. The Legal and Policy Framework for Recovery</b>	<b>4</b>
<b>5. Debts Covered by this Policy</b>	<b>4</b>
<b>6. Sundry Debts</b>	<b>4</b>
<b>7. Council Tax</b>	<b>7</b>
<b>8. Non Domestic Rates</b>	<b>9</b>
<b>9. Overpaid Housing Benefit</b>	<b>11</b>
<b>10. Parking Enforcement</b>	<b>14</b>
<b>11. Housing Rents</b>	<b>15</b>
<b>12. Referral of Departmental Debts to the Corporate Debt Section</b>	<b>18</b>
<b>Summary</b>	<b>19</b>
<b>Appendix 1</b> Advice on Priority Debts from the Citizens Advice Bureau	<b>20</b>
<b>Appendix 2</b> Vulnerable Persons Policy	<b>21</b>
<b>Appendix 3</b> Write Off Policy	<b>23</b>
<b>Appendix 4</b> Write On Policy	<b>24</b>

# VISION AND OBJECTIVES

“We want Thurrock to be the dynamic heart of the Thames Gateway, a place of ambition, enterprise and opportunity, where communities and businesses flourish”

- Improve the education and skills of local people.
- Encourage and promote job creation and economic prosperity.
- Ensure a safe, clean and green environment.
- Provide and commission high quality and accessible services that meet, wherever possible, individual needs.
- Build pride, respect and responsibility in Thurrock’s communities and its residents.

## 1. INTRODUCTION

The council has a duty to ensure that all revenue owed to the council is collected efficiently and effectively for the benefit of all council taxpayers.

The importance of debt collection and recovery is reflected in the level of scrutiny of the council’s performance which is monitored in a number of ways including external assessment, internal audit reviews and monitoring against local and national performance indicators.

In striving to continually improve collection and recovery performance, the council recognises that some people do not pay their debts for a variety of reasons. This may include poverty or other financial hardship, which the council will endeavour to balance against its duty to collect. Conversely, the policy aims to take a robust approach to those who can pay but won’t pay. The council also believes that its debt collection and recovery policy should be fair to everyone notwithstanding their age, race, gender, disability, sexuality or religious belief.

The need for people in debt to communicate their status is important. Where a person makes contact, their circumstances will be considered with a view to agreeing a reasonable payment arrangement, minimising recovery action and helping to alleviate hardship. Where people fail to make contact or maintain arrangements, recovery action will continue.

This policy details the council’s corporate approach to debt recovery. Best practice will be applied to all debt collection, and recovery activities within appropriate legal powers.

## **2. POLICY AIMS**

The key aims of this policy are as follows:

To use cost effective and fair collection and recovery practices in the pursuance of all debts owed to the council, ensuring that those with the means to pay do pay.

To ensure a professional, consistent and timely approach to recovery action across all of the council's functions.

To consider fully the nonpayer's circumstances and ability to pay and so distinguish between the nonpayer who won't pay and the nonpayer who genuinely can't pay.

To improve the levels of income collected by the council and reduce levels of arrears.

To ensure that debts are managed in accordance with legislative provisions and best practice.

To treat individuals consistently and fairly regardless of age, sex, race, gender, disability and sexual orientation and to ensure that individual's rights under Data Protection and Human Rights legislation are protected.

## **3. FAIR DEBT COLLECTION**

This policy aims to adopt fair debt collection and recovery practices including:

Ensuring that bills are accurate, timely and clear. Providing appropriate and easy payment methods.

Encouraging people who fall into arrears to contact us and agree to payment arrangements appropriate to their circumstances.

Identifying deliberate non-payers or those who delay payment and taking timely and effective enforcement action.

Helping to reduce the effect of debt on people on low incomes by informing people of the general availability of income-related benefits such as Job Seekers' Allowance, Income Support, Working Families Tax Credit, Pension credit and disability related allowances etc. and by trying to ensure that maximum benefit take-up occurs.

Advising people where they can get independent advice with financial problems (e.g. Citizens Advice Bureau or Credit Union). (Appendix 1)

At all times throughout the Councils debt collection process, due regard will be given to the Councils Vulnerable Persons Policy. (Appendix 2)

## **4. THE LEGAL AND POLICY FRAMEWORK FOR RECOVERY**

The council has a legal duty to ensure cost effective billing, collection and recovery of all sums due to it.

This policy is in addition to existing legislation and is designed to enhance the procedures already in place to collect debt.

## **5. DEBTS COVERED BY THIS POLICY**

- Sundry Debts
- Council Tax
- National Non-Domestic Rates or ( Business Rates)
- Housing Benefit Overpayments
- Parking Penalty Charge Notices (PCN)
- Housing Rents

Each of the above has their own section within this Corporate Fair Debt Policy.

## **6. SUNDRY DEBTS**

### **Council Policy**

The Corporate Director of Finance & Corporate Governance on behalf of the Council has a duty to recover all outstanding amounts.

It is essential to maintain Council services offered by recovering any costs for those services provided. It is imperative that invoices are paid to ensure the continuance of services.

### **Policies Specific to Sundry Nonpayer's**

Sundry nonpayer debtor invoices are raised by the Sundry defaulter's team. A full individual's name or company name and address, including postcode is required. Invoices should be charged to the correct cost centre and VAT code. A detailed description of the service should be provided. Agreements, evidence or any legislation applicable must be retained by the originating department in order to provide an audit trail confirming the debt raised is valid and to enable the original documents to be used if applicable for court proceedings.

The responsibility for the billing, collection and recovery of sundry nonpayer demands is held by the Corporate Director of Finance & Corporate Governance.

Sundry nonpayer can be cancelled at any recovery stage providing the proper procedures are followed.

Service providers must endeavour to obtain payment in advance or at the time of service delivery wherever permissible.

At all times the council will act legally and promptly in all cases where payment is overdue.

Invoices will be issued promptly with sufficient information to explain the charge.

In the event of non payment a reminder will be issued.

If payment is not made, a second reminder will be issued.

If payment is still not made, a Letter Before Action (LBA) will be issued.

Debts at LBA stage may be reviewed by a member of the Sundry defaulters team, who will decide on the progression of the debt based upon the debt type, previous recovery history and apply legally appropriate recovery methods.

If the debt is deemed as non-recoverable, the Recovery Manager will employ the write off procedure (see Appendix 3).

If the debt has been deemed to be recoverable, the Sundry defaulter's team will review the debt and the next steps to be taken in accordance with the Council's Vulnerable Person's policy. This may include the use of Experian in order to carry out financial/historical searches and the Insolvency Services website to check that the nonpayer is not bankrupt. The use of Experian for searches is monitored by the Recovery Manager. A land registry search to verify property ownership may also be carried out at this stage.

If the debt has been deemed to be recoverable and the methods above have been exhausted, where legally permissible, the provision of future services to the nonpayer may be suspended until outstanding debts are settled after discussion with the appropriate service manager.

If a Letter Before Action has been issued, and if after the specified time payment has not been made, a County Court Claim will be issued. This will result in a County Court Judgment (CCJ) being lodged. This may affect a credit rating and make any type of future credit agreement difficult. It should be noted that once a County Court Claim has been issued, court costs and interest will be added to the debt.

Once Judgment has been obtained, the council will then enforce this, which can include an attachment of earnings order, Bailiff action to

seize goods to the value of the debt, Order to attend court for questioning, Bankruptcy proceedings for debts above £750, High Court Sheriff collection, Garnishee Order or outside debt collection agents visiting the property.

A charging order may be obtained on the nonpayer's property, which will remain in place until the property is sold, although this can be enforced sooner by proceeding with an order for sale.

To prevent any of the recovery action shown above, it is important that contact is made between the nonpayer and the council to seek reasons for non payment. If appropriate and agreeable with the Sundry Debt Team instalment agreements can be arranged dependant on individual circumstances.

Ownership of all sundry debts rests with the originating units. It their responsibility to:

- Issue an instruction to cancel an invoice, using a Sundry nonpayer Cancellation Form;
- Correspond with or discuss with the nonpayer issues relating to the validity of the debt; and determine what, if any, services should be provided to nonpayer's who are in arrears. The Sundry Nonpayer's Section will provide reports to the originating departments on a regular basis as to the value of their outstanding accounts with a monthly report showing the status of debts raised by that service department.
- Requesting that the debt be written off.

It is the responsibility of the service department to determine how to supply services to a nonpayer who is already in arrears. However, prior to a council service being withdrawn completely from a nonpayer, the service department must identify if the service can be legally stopped and then contact the nonpayer to explain the action to be taken and the reasons behind it.

Where a nonpayer has legally passed on his/her responsibility of there finances to there representative, the representative will be held liable for all charges incurred by the customer. In the event of non payment the Local Authority will pursue recovery of monies owed to the Council against the appointed representative. This will normally result in Court action to recover any outstanding charges.

### **Cancellation of sundry debt invoice**

Only staff working in the Sundry Nonpayer's team will have access to cancel sundry debt invoices raised on the nonpayer's system.

If service managers wish to cancel a sundry nonpayer invoice then they must complete the Sundry Nonpayer's Cancellation Form, which must be signed by an authorised officer. It should then be sent to the Sundry Nonpayer's Section.

For an officer to be authorised to sign the cancellation form, they must have approval from their Service Manager or a Director. This is

recorded and held in the Sundry Debtors Section. It will be the responsibility of the Recovery Manager to update this annually.

### **Write Offs**

The Sundry Nonpayer's Section will provide the following details to The Corporate Director of Corporate Finance and Corporate Governance to enable them to decide on whether or not to write off a debt:

- Nonpayer reference
- Total sum
- Reason for debt
- Action taken to date to recover the Sundry non payment

Debt which is identified for write off will be actioned in accordance with Thurrock Council's Corporate Write off Policy (See Appendix 3).

The Council recognises that there will be instances where there will be credit balances on accounts and as such reference is made to the Write on Policy (Appendix 4). This will apply to all the different debt types as set out within this document.

## **7. COUNCIL TAX**

### **Council Policy**

In accordance with the provisions of the Local Government Finance Act 1992 Thurrock Council is responsible for levying and collecting all Council Tax that is payable on all occupied and unoccupied domestic properties, which are not exempt and situated in the borough of Thurrock.

The Debt recovery Manager on behalf of the council has a duty to recover all outstanding amounts of Council Tax and at all times staff within the Revenues Department will operate according to the council's strategy.

### **Policies Specific to Council Tax**



It is important that anyone who does not pay their Council Tax by the due date is pursued for payment quickly.

The collection and enforcement of Council Tax is governed by the regulations "Council Tax (Administration and Enforcement) Regulations 1992".

When an instalment or part of an instalment is missed a Reminder letter will be sent.

If the charge payer fails to make payment or contact the Council following a 1<sup>st</sup> Reminder letter a Final notice will be sent and the resident will lose the right to pay by instalments and the full sum, payable for the year, will become due within 7 days.

Where any overpaid Council Tax Rebate has been made the amount will be debited back to the charge payer's account.

If no contact has been made following the Final notice, the council will issue a summons for the charge payer to appear before the Magistrates Court for non payment of the residual Council Tax.

Explanatory notes will be issued with the summons notice explaining the implication of Council Tax Enforcement.

When no contact has been made following the summons notice, the council will request the Court to issue a summons.

If the charge payer contacts the council and agrees an arrangement to pay following a summons the residents employer details will be captured and retained.

Where employer details are supplied an attachment to earnings may be considered as an arrangement to recover the outstanding debt, however this course of action would not supersede the use of Bailiffs to call/remove goods.

Should the account not be settled by the Court hearing date the council will make an application for a Liability Order plus costs.

The Council has set up surgeries that are held within the Councils buildings, prior to the court hearing this encourages charge payers to come and speak with the Council, in a neutral environment and resolve any issues they have before the Court Hearing.

Staff attending court will be fully prepared to assist the charge payers who may choose to attend court for the Liability Order hearing and ensure they have a written breakdown of summons and liability order costs available.

A Council Tax Notice of Liability Order and information request with details of the possibility of Bailiff action will be issued to the taxpayer within 3 working days of the court hearing.

Should the debt fail to be recovered by bailiffs appropriate action to prosecute will be taken.

Where information about relevant benefits is provided an attachment to benefit may be arranged to recover the outstanding debt. however this course of action would not supersede the use of Bailiffs to call/remove goods.

The Authority may consider where appropriate, Charging Orders to be applied for and/or, if appropriate the authority will Petition for Bankruptcy, or take steps to instigate petition for a means enquiry hearing. In addition, the Council may consider Committal to Prison action against habitual late payers, or those that are intentionally refusing to make payment and/or fail to contact the Council.

### **Bailiff/External Agency Recovery**

When the services of Bailiffs/External Agency Recovery have been determined a service level agreement will exist along with formal written procedures specifying the standard of service to be provided and will cover the following matters:-

- The initial bailiff visit will be expected to be made at the earliest opportunity of receipt of the case.
- Where no contact has been made within office hour's then at least one visit will take place outside normal working hours.
- There will be specific procedures for the removal of goods.

- The authority should be able to access the external bailiffs system via a link in order to make enquires

### **Committals**

The council will send a pre-committal warning letter prior to commencement of proceedings allowing the charge payer the opportunity to make payment.

Committal Summonses will be served using methods agreed by the authority.

Where the resident fails to respond a means enquiry summons will be issued.

The authority shall charge costs up to the statutory maximum at the time of issuing a means enquiry to cover reasonable costs against the charge payer as their failure to discharge their liability or make acceptable arrangements has forced the Council to take this course of action

### **Write Offs**

Council Tax which is identified for write off will be actioned in accordance with Thurrock Councils Corporate Write off Policy (Appendix 3).

## **8. Non Domestic Rates**

### **Council Policy**

Schedule 7 (part 1) Local Government Finance Act 1988 provides that the multiplier is set by the Secretary of State. Thurrock Council is responsible for levying and collection of Non Domestic Rates that appear on the Rating list for all occupied and unoccupied hereditaments which are not exempt and situated in the borough of Thurrock.

In order to ensure arrears are kept to a minimum and the Non Domestic Rates are kept as low as possible for everyone, it is essential that Thurrock Council operate an effective and efficient approach to the collection of Business Rates monies using the methods determined by legislation and regulation

The Debt Recovery Manager on behalf of the council has a duty to recover all outstanding amounts of Non Domestic Rates and at all times staff within the Revenues Department will operate according to the council's strategy.

## **Policies Specific to Non domestic Rates**

The responsibility for the billing, collection and recovery of Non Domestic Rates is held with the Revenues section.

It is important that anyone who does not pay their Non Domestic Rates by the due date is pursued for payment quickly.

When a payment is missed a reminder letter will be sent.

If the charge payer fails to make payment following an Instalment Reminder letter the charge payer will lose the right to pay by instalments and the full sum, payable for the year, will become immediately due.

If a charge payer contacts the authority and agrees special arrangements to pay, the agreement will be confirmed in writing. When no contact has been made following the reminder notice, the council will issue a summons.

Explanatory notes will be issued with the summons notice explaining the implication of Non Domestic Rate Enforcement.

Should the case reach court the council will make an application for a Liability Order at the hearing.

Staff attending court will be fully prepared to assist who may choose to attend court for the Liability Order hearing and ensure they have a written breakdown of summons and liability order costs available.

If no arrangement is made to clear the Liability Order debt, the case will be passed to Bailiffs for recovery action.

Should the debt fail to be recovered by bailiffs appropriate action will be taken. Where appropriate, a petition for bankruptcy/liquidation/winding up may be sought. In the case of individual liability a means enquiry could be undertaken.

## **Bailiff/External Agency Recovery**

When the services of Bailiffs/External Agency Recovery have been determined a service level agreement will exist along with formal written procedures specifying the standard of service to be provided and will cover the following matters:-

- The initial bailiff visit will be expected to be made at the earliest opportunity of receipt of the case.
- There are specific procedures for the removal of goods.
- Cases will only be returned by bailiffs after at least three unsuccessful visits have been made.

- The authority should be able to access the external bailiffs system via a link in order to make enquires.

### **Write Offs**

Charge payers debt which is identified for write off will be actioned in accordance with Thurrock Councils Corporate Write off Policy (Appendix 3).

## **9. Overpaid Housing Benefit**

### **Council Policy**

The majority of Housing Benefit Overpayments are recoverable. A recoverable Housing Benefit overpayment must always be recovered from the claimant, the person to whom it was paid, or their representative.

This does not apply in the case of excess council tax Benefit, as this is recovered directly from the claimants council tax account through the council tax system and would be administered through the council tax Section in accordance with Council Tax legislation. Some debts are irrecoverable, for example, those caused by Official Error where the claimant could not reasonably have known that they had been overpaid or where they had not contributed to the error.

Officers assessing claims will decide if the overpayment is recoverable at the time of processing the overpayment. Any overpayment considered irrecoverable will be referred to a Senior Officer for a final decision.

It is at the discretion of the Council whether to recover an overpayment. Where known, the personal circumstances of the claimant should be taken into account when deciding whether to recover the overpaid amount.

The Benefits Manager on behalf of the Council has a duty to recover all outstanding amounts of overpaid Housing Benefit and Council Tax, and at all times staff within the Revenues Department will operate according to the council's strategy.

## **Policies specific to overpaid housing and council tax benefit**

### **Who to recover from**

Any recoverable overpayment will be recovered from the claimant or the person to whom payment was made (this could be a landlord or the claimant's appointee). When deciding who should repay the debt all factors must be taken into account such as the likelihood of the person receiving the payments knowing they were being overpaid. Where payments are made to a landlord, we will make a judgement based on evidence available on whom to recover from.

Where the overpayment has been made due to misrepresentation or failure to disclose a relevant fact by the customer, someone acting on their behalf, their landlord or an agent, then recovery will be sought from the person to whom the payment was made.

The recovery of fraud overpayments are prioritised by interviewing claimants immediately after they have been issued with a Formal Caution or Administration Penalty and make arrangements with them to clear the debt. The Councils Benefit Fraud manager may make use of the Proceeds of Crime Act to secure any assets that are deemed to have been accumulated through criminal activity.

### **Recovery Methods**

Councils can recover overpayments by any lawful means. One or more of the following methods of recovery dependant upon the individual circumstances of each case.

### **Recovery of Rent Rebate/Rent Allowance from Future Benefit**

Action	Timescale	Follow Up
--------	-----------	-----------

Notification	Within 2 working days	
Customer requests to renegotiate recovery rates	10 working days	Letter to customer confirming new recovery rate within 2 working days

### **Recovery from Ongoing Benefit – Rent Allowance or Rent Rebate**

Where a claimant continues to receive Housing Benefit we will make deductions from ongoing payments of Housing Benefit having regard to their financial circumstances. Where appropriate we will recover debts at the weekly amounts recommended by the Department of Works and Pensions (DWP).

As well as the above-mentioned rates of recovery, we will also increase deductions, where appropriate, by half (50%) of any of:-

- the earnings disregard, if applicable
- regular charitable income or voluntary payments, if applicable
- War Disablement or War Widows Pension, if applicable

In all above-mentioned cases, the recovery amounts are subject to an overall maximum deduction, which does not reduce the benefit payable to less than £0.50 pence.

A Guide to Housing Benefit and Council Tax Benefit Overpayments is issued with every Overpayment Letter providing information to claimants about overpayments and appeal rights.

### **Deduction from certain DWP benefits**

We may ask the DWP Debt Management Office, to recover an Housing Benefit (HB) overpayment by deduction from certain DWP benefits, as prescribed by Regulation. These are as follows: -

- Income Support
- Attendance Allowance
- Jobseeker's Allowance
- Disability Living Allowance
- Incapacity Benefit
- Industrial Death Benefit
- Industrial Injuries Disablement Benefit
- Carer's Allowance
- Maternity Allowance
- State Pension credit
- State Retirement Pension

- Severe Disablement Allowance
- War Pension
- War Disablement Pension
- Bereavement Benefit
- Widowed Mother's Allowance
- Widow's Benefit
- Widow(er)s Pension
- Employment Support Allowance

Where necessary entitlement to benefits will be identified through the Customer Information System (CIS) connected to the Department for Works and Pensions Database.

### **Recovery from benefit payments made by another authority**

#### **County Court action**

Where standard recovery action has failed to recover the debt, it will be recovered in the County Court by the Council's Debt recovery team.

#### **Tracing Nonpayer's**

All available resources will be used to trace nonpayer's including data matching options, Experian searches, and utilisation of the DWP Customer Information System. External Tracing Agents may also be deployed when all other avenues have been explored and it is cost effective to do so.

#### **Payment Methods**

The following payments methods will be accepted: -

- Cheque
- Credit/ Debit Card
- Recovery from ongoing Housing Benefit
- Recovery from other Welfare Benefits

#### **Write Off**

Write Off action will be taken in accordance with the principles set out in the Council's Corporate Write off Policy. (Appendix 3) The Housing Benefit Overpayment Officer will retain details of all outstanding overpayments where Benefit is no longer in payment, in the event of future Benefit being awarded, enabling recovery in the future.

## **10. Parking Enforcement**



## **Council Policy**

To ensure compliance with the restrictions within the council car parks and the Borough highways the council is authorised to issue Penalty Charge Notices to vehicles parked in contravention of the restrictions as stated in the Traffic Management Act 2004.

### **Policies specific to Parking Enforcement**

Penalty Charge Notices (PCNS) will be issued to contravening vehicles whenever an enforcement officer deems it necessary.

The recovery of the fines is the responsibility of the office team and for reasons of segregation of duties and safety, the enforcement officers are not allowed to take payment for the PCNS they issue.

Except where a separate instalment arrangement has been agreed by the parking office, all payments will be in accordance with the Traffic Management Act 2004.

Through out the life of the PCN the office team should make every attempt to recovery the amount due at every stage in the proceedings.

Within the authority the council has the discretion to cancel a Notice for various reasons and therefore not proceed with the fine. The powers of discretion in these cases can only be exercised by a Senior Parking Manager.

At all times the council will act legally and promptly in all cases where payment is overdue.

Before a notice is passed to a bailiff for collection all statutory methods of enforcement must have been taken. Notice to owner, Charge certificate, and statutory declaration.

Where every effort has been made to recover up to the statutory declaration stage the office team, in conjunction with the Parking Manager can consider cases to be put forward for a warrant of execution.

Once the Court are happy that all the statutory steps have been taken and the warrant has been granted to the council further recovery action can be considered.

Should the office team not be able to collect the amount due then the warrant can be passed to one of the council's bailiffs for collection.

Where instalment arrangements are sought by the charge payer an investigation into their ability to pay must be carried out and initially the amount should not be paid over a period longer than 3 months. Where the office team, due to the amount or circumstances, the balance should be paid over a longer period then a case conference should be held with the line manager to decide a way forward.

### **Write off**

If the office team and bailiffs have not been able to recover the money the office team must consider the case to be listed as unable to recover and put onto a write off list to be considered and signed by the Corporate Director of Finance and Corporate Governance. As well as the name, address and amount the list should also show the types of recovery action that have been taken. Write off action will be carried out in accordance with the Corporate Write off policy. (Appendix 3)

To ensure segregation of duties the officer compiling the write off report cannot remove the records from the system and once the cases have been removed from the system the write off sheet must be passed to the service manager for checking.

## **11. Housing Rents**

### **Council Policy**

The aim of the department is to maximise income collection and minimise arrears owed by current and former tenants. We ensure that tenants have the information and support they need to maximise their income and prevent or minimise debt.

Tenants are informed of their payment responsibilities before they commence their tenancy, when they sign-up and at their welfare visit which takes place four weeks after the sign up dates/commencement of tenancy.

The Housing department aims to make paying rent and other charges easy. We offer a range of payment methods, which are widely publicised.

Full advice is given to tenants on their rent obligations and entitlement to Housing Benefit at the time of sign up.

Tenants are informed of the full rent due and details of any service charges due and details of what the services covered by the charge are. Tenants are advised in writing of any changes to the rent due within 28 days of a change and are provided with a quarterly statement.

### **Policies specific to Housing Rents**

At sign-up / commencement of tenancy new tenants are advised of their responsibilities regarding the tenancy placing great emphasis on the requirement to pay their rent promptly

A debt counselling service has been set up between Thurrock Council incorporating other organisations and the CAB for our residents to access if they require assistance. Tenants can be referred to the CAB or other organisations by rent arrears officers or they can approach CAB directly themselves.

Arrangements must be put in place to oversee and action arrears when a Team member/staff post is vacant, annual leave or absent through sickness.

Our objective is to achieve and maintain upper quartile performance in the level of rent collection and rent arrears by ensuring the following: -

- A corporate approach to the recovery of debt
- Taking account of social inclusion
- Refer to a debt counselling service
- Adopting examples of Good Practice and ensuring an approach of Continuous Improvement.
- Staff are fully trained, supported and developed
- Customer focus in the delivery of the service

The Rents and Welfare Manager is responsible for the collection of rent income and recovery of rent arrears. It is important that anyone who does not pay their rent by the due date is pursued for payment quickly.

At the first missed fortnightly payment an immediate letter is sent to the tenant depending on vulnerability. Alternatively, if there are concerns about the account, a letter should be sent to the tenant.

All accounts are monitored and the arrears processed is followed. If there is no response by the next payment date a second letter is sent out and the situation monitored.

If there is no response to the second letter a home visit must be arranged by the Rent Officer. If on arrival for this appointment the Rent Officer finds the tenant is not in, a business card should be left asking the tenant to contact the office. A visit will also be carried out at the pre Notice of Seeking Possession (NSP) stage

### **Service of Notice of Seeking Possession**

A Notice of Seeking Possession is the first step in taking legal action against the tenant. The purpose of this action is to recover possession of the Council's premises from the tenant and may result in the tenant's eviction from their home. Service of the Notice (NSP) is governed by Law and must be carried out correctly for successful legal action to follow.

As a general rule, the arrears should not be permitted to get any higher than the equivalent of six weeks rent before a NSP is served. However, the Rent Officer has the discretion to serve a NSP earlier than this or to delay it providing an explanation for the action is recorded. The Notice should be served, together with a covering letter.

The Rent Welfare Officer will only refer a case to Court under the following circumstances:-

- An arrears report was completed.
- The NSP is still valid.

### **Court Hearing**

Rent Arrears Officer attends and presents the cases to the Court and will ask the Court Judge for one of the following orders;

- Money judgement for the sum outstanding
- Possession order-(suspended or outright)
- Case adjourned
- Case dismissed
- Post Banned Orders
- Case Withdrawn

If the tenant defaults on repayments or the court order, the Rent Arrears Officer will apply to the Court for an eviction order to repossess the property.

Officers are advised to seek eviction as a last resort.

### **Pre-Eviction Action**

Prior to seeking an eviction and post court summons of a case, the Rent Welfare Officer should inform the Homeless Families and Social Services departments regarding the affected persons.

The eviction should be cancelled if the tenant clears the debt in full before the Bailiff enforces the warrant for eviction.

Where the tenant makes a large payment and offers to pay off the balance in instalments, the tenant should be advised to apply to the Court for a stay hearing.

Tenants have the right to apply to the Court for the eviction warrant to be suspended before the eviction date. Based on evidence presented to the Court by both parties, the Judge may dismiss the appeal or suspend the eviction on terms of payment of the rent plus arrears.

### **Recovery of Former Tenant Accounts**

Should a tenant leave a property without settling the rent account, the arrears accrued are known as former tenant arrears and an account is created, known as

a former tenant account (FTA), to manage and recover monies owed to the Council. The Allocations and Homelessness Sections of the Housing Department will check FTA records to ensure that clients requesting social housing with previous arrears arrange to repay any debt owed.

A decision should be made on the most effective and appropriate method of recovery. This is based on the client information available. An initial telephone call is made, or a letter sent detailing the status of the account, including periods of tenancy, address and value of arrears. A request for payment in full is made at this time.

Should a nonpayer advise that payment in full is not affordable, a brief financial assessment must be carried out by the Officer and a potential payment plan is offered to repay the total debt by instalments. Letters of confirmation are sent to confirm all agreements to pay (either in full or by instalments).

Each case should be delegated to the Rent Welfare Assistant, designated to deal with such accounts. Accounts are monitored for payment on a regular basis.

In line with procedures, unsuccessful cases will be returned to the Council from the Debt Collection Agency within three months. The Housing Manager will decide whether a case returned will be referred to the Corporate Debt Section for further recovery or to put the debt forward for write off in line with the Corporate Write Off Policy.

### **Write Off**

Council Tax debt which is identified for write off will be actioned in accordance with Thurrock Borough Councils Corporate Write off Policy (Appendix 3).

## **12. Referral of Department Debts to the Corporate Debt Section**

### **Department responsibility**

It is the individual Departmental responsibility to collect monies owed to the Council by ensuring initial recovery methods are carried out within its own powers in accordance with legislation.

It is also the individual Departmental responsibility to offer initial welfare advice and record an assessment of an individual nonpayer's circumstances.

### **Sundry Debt**

All sundry debt invoices will be referred to the Sundry Nonpayer's (Defaulters) Section for collection and recovery.

### **Council Tax**

Unpaid Council Tax liabilities will be pursued by the Debt Management team.

### **Non Domestic Rates**

Unpaid non domestic rate liabilities will be pursued by the Debt Management team.

### **Overpaid Housing Benefit**

Unpaid Housing Benefit overpayments will be referred to the Sundry Nonpayer's (Defaulters) Section.

### **Recovery Action to be taken by the Sundry Debt Team**

The type of recovery methods used by the Sundry Nonpayer's Team to recover monies owed to the Council are itemised below.

- Order to Obtain Information from Nonpayer
- County Court Proceedings
- Bankruptcy – Winding Up Orders
- Attachment of Earnings Order
- Charging Order on Property
- Third party order/ garnishee
- High Court Enforcement/Sheriff
- Committals

### **Summary**

Through the Corporate Fair Debt Policy, the above enforcement remedies will be used as required. Such action may not always be necessary and therefore each case has to be considered on its own merit by the Debt recovery team in line with the Council's Vulnerable Persons Policy. (Appendix 2) The Debt recovery team will aim to provide a one-stop contact point for the Nonpayer, the Council Departments and outside agencies involved in debt and welfare advice.

## **APPENDIX 1.**

### **Advice on priority debts from the Citizens Advice Bureau**

**The following advice is supplied to the public by the Citizens Advice Bureau for information. It does not override this corporate debt collection and recovery policy.**

#### **Priority debts**

Priority debts are debts owed to creditors who can take the strongest legal actions against you if you do not pay. It is not the size of the debt that makes it a priority, but what the creditors can do to recover their money.

Priority debts are:

- Mortgage arrears
- Rent arrears
- Income Tax and VAT
- Fines
- Maintenance and child support
- Council Tax and Rates
- Fuel debts
- Hire Purchase for goods that are essential e.g. a car needed for work

If you have any of these debts, you must deal with them before you offer to repay any of your non-priority debts.

#### **Non-priority debts**

Examples of non-priority debts are:

- Credit Card and Store Card arrears
- Catalogue arrears
- Bank overdrafts and loans
- Hire Purchase for goods that aren't essential e.g. a television
- Money borrowed from family and friends

You cannot be imprisoned for not paying non-priority debts. You are unlikely to lose your home or your essential goods. However, if you make no offers to pay, without explaining why, the creditors will take you to court. If you still fail to pay when the court has ordered it, the creditors can take further action – for example, they can get another court order allowing them to use bailiff services.

## **Appendix 2. Vulnerable Persons Policy**

### **Background**

Thurrock Council recognises that in certain circumstances the usual enforcement procedures such as bailiff action or committal proceedings may not be appropriate for people who find themselves in debt to the Council. This could be because the person might be viewed as vulnerable owing to their individual circumstances. The Vulnerable Persons Policy provides guidance for staff and our collection agents on how to manage the situation and support a vulnerable person who owes a debt to the council.

It will support and assist officers and collection agents to be able to promptly identify vulnerable individuals in order that each person can be treated with dignity and that their individual situation can be dealt with in a sensitive and responsible way.

People who are considered vulnerable will find themselves in a range of situations and it is important to remember that in many cases people will have tried very hard to manage and will not have deliberately created the situation they find themselves in. By the time the individual comes to the attention of the debt recovery service it is important to consider that in many cases they may be very concerned and worried about owing money to the Council.

### **People who are Vulnerable**

People are considered to be vulnerable for many different reasons. Some of these reasons are as follows:

- Experiencing Mental ill Health
- Having a physical disability
- Being learning disabled
- Being a disabled parent
- Being a parent of a disabled child
- Having communication difficulties
- Experiencing significant long term or life limiting ill health
- Being hearing or visually impaired (deaf or blind)
- Suffering from Domestic Violence
- A combination of any of the above

Other areas that also make people potentially vulnerable can be:

- Someone who is recently bereaved
- Where literacy skills are an issue or where English is not the person's first language
- Someone following a drug or alcohol rehabilitation programme



- Someone recovering from a serious accident or illness
- A person who has recently been released from prison
- Those who are asylum seekers or refugees

The above lists are not exhaustive and each situation should be viewed individually.

## **Identification**

Based on the above descriptions, the member of staff or collection agent can make a decision about whether a nonpayer may be considered vulnerable. The initial request to consider a person as vulnerable may come from a third party e.g. the Citizens Advice Bureau, Social Services, Housing. The examples above are only a guide and each case has to be considered based on the person's individual circumstances.

Any nonpayer who is considered potentially vulnerable will be flagged up immediately to the designated senior officer. The account should be marked with the appropriate code on the respective computer systems. Recovery proceedings will be amended/adjusted accordingly.

A senior officer may undertake a review of any referral. The nonpayer may be visited at home, interviewed by telephone or invited to attend a face to face discussion in the office. It will be important to make sure that each person's circumstances are taken into account and consideration should be given to any support the person may require if they are interviewed, such as a family member, an advocate or a support worker. With the nonpayer's consent, further information and/or opinion may be sought from medical practitioners, Social Services and relevant professional bodies. It is imperative that this stage is completed as quickly as possible so as to limit any uncertainty or anxiety on the part of the person concerned.

## **Evaluation**

Having weighed carefully all the evidence, the senior officer will conclude whether the nonpayer would be adversely affected if recovery proceedings were to continue. If so, the case will be identified as a Vulnerable Person's account. All future enforcement notices and actions may be stopped. The designated senior officer will ensure that all Vulnerable Persons are accorded the personal and sensitive attention required, within the provisions of the law. Any person considered not to be a Vulnerable Person may appeal to the relevant departmental Senior Council Officer whose decision will be final.

In undertaking the investigation, the designated senior officer would seek to ensure that

- The liability is correctly calculated and all reductions have been applied (e.g. status discounts, Council Tax benefit)

- A comprehensive statement of means is completed where legally appropriate for the debt. Where applicable, a clearly affordable repayment plan is agreed, together with a suitable payment method. Care must be exercised to avoid the accumulation of arrears which would have to be repaid at a later date
- The person has a named contact and direct line for any future enquiry
- Any authorisation for a third party to act on behalf of the Vulnerable Person is obtained and properly recorded.
- Where appropriate, a recommendation may be made for the debt to be written off in part or whole. Any request should be supported with as much information as possible of the persons circumstances – both personal and financial

### **Appendix 3. Write Off Policy**

The council recognises that where a debt is irrecoverable, prompt and regular write off of such debts is good practice. The council will seek to minimise the cost of write-offs by taking all necessary action to recover what is due. All debts will be subject to the full recovery, collection and legal procedures as outlined in the council's Corporate Fair Debt Policy.

Paragraph 6.34 of the Council's Finance Procedure Rules (Constitution: Chapter 9/Part 3) states that managers shall ensure that every effort is made to recover debts due to the Council. They also have authority to write off a debt where they consider that the sums are not reasonably recoverable, subject to the following:

Up to £2,000 in any one case after notifying the Corporate Director of Finance & Corporate Governance

Between £2,000 and £25,000 in any one case after consultation with the Corporate Director of Finance & Corporate Governance and the Monitoring Officer

Over £25,000 in any one case after consultation with the Corporate Director of Finance & Corporate Governance and the Monitoring Officer and subject to the appropriate Cabinet approval

Debts may be referred to the appropriate Service Manager / Director for all sums for write-off in the following circumstances:

- The council has evidence to confirm the claimant is suffering a severe physical or mental illness, which renders enforcement action inappropriate.
- The council is unable to trace the nonpayer.
- The debt is not cost-effective to pursue due to small balance.
- The debt is not cost-effective to pursue due to the likelihood of payment balanced against the cost of proceedings.
- The claimant has died and there are no or insufficient funds in the estate to settle the debt.

- The claimant is subject to formal insolvency proceedings and there is little likelihood of a dividend.

Before a debt is written off from any system, the member of staff identified as being responsible for write offs, should have received all the related paperwork and used it to check a sample of the debts to ensure:

- Accuracy by looking them up on the appropriate system;
- The council's Corporate Fair Debt Policy has been adhered to.

## **Appendix 4. Write On Policy**

The council recognises that in cases of a credit remaining on an account for an unacceptable period of time i.e. over thirteen months, the credit should be considered for write off. This process is known as a "write on". Extensive research should be undertaken prior to this consideration to enable an attempt to be made to inform the payee of the credit. Letters to the last known address must be written and searches carried out to establish new addresses. If such attempts are not successful, the credit should be written on following the same policy rules and processes as detailed in the write off policy.