

Subject:	Corporate Debt Policy
Date of Meeting:	18 March 2021
Report of:	Acting Chief Finance Officer
Contact Officer: Name:	Graham Bourne
	Tel: 01273 291800
Email:	Graham.bourne@brighton-hove.gov.uk
Ward(s) affected:	All

FOR GENERAL RELEASE.**1 PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The council's Corporate Debt Policy is reviewed annually. A number of changes in approach to debt recovery and collection have been emerging and therefore this year's review has resulted in a recommendation to update the policy to reflect best practice in debt collection and replace the current version, last updated in 2018.

2 RECOMMENDATIONS:

That the Policy & Resources Committee:

- 2.1 Notes that the proposed policy commits the council to ending the use of committal proceedings to enforce Council Tax collection, in all but the most exceptional of circumstances.
- 2.2 Notes the Equality Impact Assessment at Appendix 2.
- 2.3 Approves the revised policy at Appendix 1 and agrees that it is put into practice with effect from 1 April 2021, subject to having due regard to any necessary consultation and engagement processes.

3 CONTEXT/ BACKGROUND INFORMATION

- 3.1 The review of the Corporate Debt Policy has been conducted with reference to a range of reports that explore current, evidence-based practice in relation to the ethical collection of debt. This includes reports from the Money Advice Trust, the Financial Conduct Authority, Citizens Advice Bureau and Deloitte's.
- 3.2 Further reference has been made to best practice in Welfare Support. The council is part of a Local Government Association (LGA) working group developing best practice in this area, underpinned by the 2019 LGA report – Reshaping Financial Support.
- 3.3 Reference has also been made to the specific policies of other local authorities where best practice has been identified, either through the work with the LGA or identified by the council's Corporate Debt Team. These authorities are listed under 'Background Documents' at the end of the report.
- 3.4 The council is also the only local authority represented in the Cabinet Office's Cross Government Debt Group, which is looking at improved coordination of debt collection and delivery of best practice across the public sector. The policy is complementary to the objectives and direction of travel of this group.

Key changes to the policy

- 3.5 The policy has been updated to reflect the increasing emphasis in best practice on early intervention and pre-enforcement activity. This early engagement of households struggling with debt complements the council's approach to welfare support and will be important to the council's recovery programme in the post pandemic environment.
- 3.6 There is increasing evidence that pre-enforcement activity driven by data analysis is producing more effective long-term collection results and is more supportive to the broader objective of enabling low income households to manage their finances as a platform for moving away from crisis and benefit dependency. This is supported by the Citizens Advice Bureau's Council Tax Protocol as follows:

"Early intervention and proactive contact with people struggling with bill payments can help prevent them incurring further charges and help alleviate stress. It can also potentially help to reduce collection costs and the need to access local public services, particularly mental health services."

Citizens Advice Bureau, Council Tax Protocol

- 3.7 Both private and public sector debt collection agencies are adopting operational models that reflect this change to a more holistic approach. Teams focussed on supporting vulnerable people to manage and pay their debts in a way that is sustainable for them, recognising that a specialist, proportionate approach is more effective and supportive, are a common fixture in reputable private debt collection services, ensuring their adherence to Financial Conduct Authority (FCA) guidance and best practice.
- 3.8 The developments in the field of data analysis and segmentation are driving this change. The cross-government Cabinet Office working group is supporting this transition with a number of pilots exploring the value of data sharing between government agencies. In keeping with this progression, the policy proposes that the council joins the growing number of local authorities that aim to move away from the use of enforcement officer home visits to collect debt arrears. This is supported by advice and support agencies, for example, the Money Advice Trust who issued the following statement:

"We recommend that council leaders make a clear public commitment to reduce the use of bailiffs over time by improving their debt collection practices, in order to provide clarity to officers at an operational level. This commitment could take the form of a public statement, a formal decision or statement of administration policy, or a motion of Full Council. This commitment should include all debt types, not just Council Tax arrears. For authorities in England, we recommend exempting recipients of Council Tax support, who have already been identified as requiring additional support through locally-determined criteria, from bailiff action altogether. This recommendation would see local authorities follow the lead of the small number of councils who have adopted this approach, which has been shown to deliver significant results for both residents and the taxpayer."

Money Advice Trust, Levelling Up (Nov 2020)

- 3.9 Initially, the proposal to move away from enforcement visits would apply to Council Tax collection but the Corporate Debt Board is already introducing operational changes that will reduce and ultimately remove this practice across the whole council portfolio.

- 3.10 In 2019, there were 30 local authorities in England who reported that they had a policy of exempting recipients of Council Tax Support from enforcement agent action. This represents 9% of authorities and is an increase from 23 councils two years ago. Some local authorities volunteered that they had implemented measures that fell short of a full exemption but that did have the effect of making the use of enforcement agents in these cases less likely.
- 3.11 The revised policy also includes a proposal to end the use of committal as an ultimate enforcement action for non-payment of Council Tax in all but the most exceptional circumstances. This is a very rarely used option and is only used as an absolute last resort when faced with wilful refusal to pay. Only one resident has received and served a prison sentence in the city in the last 10 years for non-payment of Council Tax.
- 3.12 The government's statutory Debt Respite Scheme Regulations 2020 ('Breathing Space' scheme) comes into effect in May 2021. It offers struggling debtors a 60 day moratorium on creditor action chasing, for example, chasing outstanding arrears, on condition that they take specified constructive actions that establish a sustainable repayment plan once the 60 day period ends.
- 3.13 The Debt Respite Scheme has two connected parts, both equally important. The first is the Breathing Space scheme. The second is the Statutory Debt Repayment Plan (SDRP), which Clause 32 of the Financial Services Bill, currently working its way through Parliament, will address. The SDRP scheme will introduce a new statutory debt solution in England, Wales and Northern Ireland focussed on debt repayment rather than insolvency. By introducing statutory protections for people on a plan to repay their debts, the SDRP will give people a much-needed route to recovery from the harm of spiralling debt problems. The bill potentially introduces a new budget pressure for the council as it will have to contribute to the funding of the scheme to be administered by the Insolvency service. However, it is unknown whether or not government will provide 'new burdens' funding to local authorities in this respect.
- 3.14 Council services will need to align to the requirements of both elements of the regulations. Corporately and collectively, the council will need to respond to the individual notifications from the Insolvency Service, who will be running the scheme, informing us about those applying for the 60-day moratorium and subsequent statutory debt repayment scheme.
- 3.15 The policy has been altered to reflect the forthcoming statutory responsibilities in order to adhere to these regulations. Regardless of the statutory imperative, the proposed changes to the policy are also recommended to reflect best practice and the direction of travel for debt collection.

4 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The council could choose to retain its existing policy and recovery procedures but it would be diverging from its stated aim to reflect best practice in its debt collection activities. It would retain committals as an ultimate sanction and continue with other recovery methods which are increasingly outmoded and were more applicable to a pre-pandemic social and economic landscape.
- 4.2 Not adapting towards recognised best practice recovery and enforcement would mean that financially and otherwise vulnerable residents would still be subject to blunt methods of debt collection and associated costs. Numerous studies have shown that traditional debt collection techniques can push households into

spiralling debt positions and cause stress and wellbeing issues. This has a wider impact on society. Households and families in debt are more likely to need support and advice from health, local and central government services. This results in increased pressure and costs on those services. In the Covid recovery environment, not positioning the council's debt collection approach alongside recognised and evidence-based best practice risks impacting the most vulnerable in society who have already been disproportionately affected by the pandemic, increasing financial hardship at a time when unemployment is a key concern.

- 4.3 The Cabinet Office has invested in and led a fairness agenda in relation to improving how public services approach citizens who have government-related debts. It recognised that the public sector had fallen behind the private sector in its approach to debt collection and that analysing data held on citizens presents an opportunity to develop a more balanced and supportive approach. Using data to better understand citizens' financial positions enables a more tailored and ethical approach to debt collection, protecting the vulnerable whilst at the same time taking a proportionate approach to those that have the means to pay. This approach enables ethical early intervention, often via digital contact where appropriate, that encourages citizens to contact the council early and agree sustainable repayment plans.
- 4.4 The Third Sector has consistently reported over the last 10 years on welfare reform that there has been a shift in the type of contacts they receive. Service users who approach them about debt to government, particularly local government, are now their primary contacts. This is a shift from 10 to 20 years ago when debts to private industry were the primary contacts. FCA regulation, alongside greater consumer rights context and confidence, has moved the private sector into a position in advance of local government in how debt is collected and particularly, how vulnerable households are supported. This is increasingly leaving the council in a position where it is seen to have the most severe debt collection policies in society. Without change, this position can be expected to worsen as more and more local authorities realign their practices and the Financial Services Bill gathers momentum.
- 4.5 The link between people with problem debts and an increased risk to their mental health has been clearly established. Current enforcement approaches were developed in a period where this link was not considered. The current practices do not take into account the most recent evidence and do not align with the standards required by private industry debt collection. In the case of imprisonment for non-payment, England is the only country in Europe where an individual can still be jailed for not paying a debt. Imprisonment (or even the threat of imprisonment) for a civil debt such as council tax has a very significant impact on the individual concerned and, from national research, the threat of imprisonment is often used by local authorities even when there is no realistic prospect of the Courts imposing such a penalty. This has wider implications in respect of harm to individuals and consequential costs to the wider public purse. Use of committal proceedings are therefore neither in the interests of the individuals concerned nor the public interest more generally. The Financial Conduct Authority standards that are applied to the private sector have banned any threats of enforcement action that are unlikely to be carried through, such as threats of a court summons when this would not or could not happen. Firms using such tactics would be likely to have their authorisations to operate removed.
- 4.6 It has been shown that early intervention is more successful in supporting residents who are in debt. Not intervening at an early stage in a more holistic way

to offer support and advice pushes people into debt spirals that are more difficult to resolve at a later stage and can increase the impact on individuals and wider society. Early intervention to support and agree sustainable repayments increases the likelihood of payment being kept to by residents and improves overall collection for the council.

- 4.7 The council will have a statutory requirement to adhere to the Breathing Space scheme, which comes into force on 4 May 2021, and this is a key part of the Cabinet Office fairness policy. The benefits of this scheme will be undermined if, on the one hand, the council adheres to this regulation, whilst on the other, it retains punitive approaches to debt collection elsewhere in its approach. If the council does not adopt the proposed changes, it will miss the opportunity to engage with citizens at an early stage and help them avoid a spiralling debt scenario. In committing to the new scheme, the Council is working with the Insolvency service as an approved ‘beta’ site to test data sharing technology and procedures.
- 4.8 An increased number of citizens in a growing debt scenario is likely to result in a higher take up of the Breathing Space scheme provisions, resulting in increased costs to the council. This would be through up front administration costs and due to a requirement to contribute to the funding of the scheme at a rate of 10% from each individual debt collected.
- 4.9 Moving away from the traditional reactive enforcement approach means that the council can invest and explore further the digital and proactive collection techniques that utilise data analysis and segmentation. The council has successfully piloted digital contact methods prior to any formal enforcement that encourage payment and contact from citizens so they can avoid debt increasing through legal costs. It is also able to monitor how citizens interact with the communication and can report on how many citizens follow links in the digital contact to information on welfare options and debt advice. The council is then able to specifically contact those citizens with more targeted approaches offering further help and support if they subsequently do not make contact for help or make a claim for a benefit.

5 COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 The reports and research identified in this report reflect on national data, case studies and real examples, which are highly relevant in determining the best way forward.
- 5.2 Locally, the Moneyworks partnership of advice agencies have told us they support the full implementation of the “Stop the Knock” and Council Tax protocol that the proposals in this report are aligned with. They expect that the demand for help with debts will be much higher during 2021 than usual years.
- 5.3 They report that some groups, for example families with young children and Black, Asian, Minority Ethnic (BAME) communities have been hit harder by the pandemic than others. These factors along with local prevalence of zero hours and agency work are also a concern and could lead to higher levels of arrears that the council and advice agencies will need to support.
- 5.4 The advice agencies have highlighted that there were existing problems with the way council tax was collected before the pandemic hit. They said that the way the regulations are designed makes it harder for people with council tax arrears to arrange and make repayments. They support changes to regulations that would

stop people being liable for their entire annual bill if they miss one monthly payment and that make it easier for councils to improve collection by giving them more powers to collect debt in a fairer way before legal action is necessary.

- 5.5 They have reported that across the debt advice partnerships, mental health issues are more and more critical and the stress and impact this is having on people is evidenced in the calls received. There is growing concern that this is becoming normal rather than exceptional. Moneyworks believe that this requires Public Health and Clinical Commissioning Group engagement with the debt and benefit agenda and service delivery, both for clients but also staff and volunteers. They acknowledge that a Mental Health and Debt Co-ordinator is in recruitment and welcome this. They would appreciate any report noting this vulnerability, the new project and the ongoing oversight of joined up action in the public sector as well as with the voluntary sector. They report at they are taking their own steps as a partnership to expand their strategic partners to include mental health support charities because of the crucial importance of this issue across all their services
- 5.6 Moneyworks locally reflects the national view of the advice debt sector that regulations need to be changed to set out the steps councils must take before using the court process. This would ensure that all people in debt are given the option of affordable repayments to get back on track. They support steps to make it easier for councils to improve collection by giving them more power to collect debt in a fairer way without taking legal action first. This would ensure that all people in debt are given the option of affordable repayments to get back on track.
- 5.7 The recommended changes to the policy are aligned with the views expressed by the Moneyworks partnership and are designed to provide a platform for the council's approach to debt collection to develop into a more ethical and proportionate one.

6 CONCLUSION

- 6.1 The council aims to improve its collection performance while maintaining ethical standards and providing comprehensive welfare support to households struggling to manage their debts. The best way of achieving this is by employing evidence-based best practice.
- 6.2 The proposed policy amendments represent best practice as identified by several independent sources. It is a template for the council to deliver debt collection services that are effective but also flexible, sensitive and empathetic.

7 FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The successful collection of income and taxation revenues of over £300 million is increasingly important in ensuring that the council can fund essential local public services, particularly following the period of substantially reducing government grant support between 2009 and 2019. The proposed revision to the Corporate Debt Policy not only brings collection policies in line with evidence-based best practice but also has the potential to maintain or improve income collection performance by ensuring a proactive, pre-enforcement approach to recovery that should prevent people falling into spiralling debt or arrears. This also has the potential to reduce not only administrative but other costs as people are likely to require less support from the council or other statutory agencies.

- 7.2 The likely costs of the Debt Respite Scheme (Breathing Spaces) are not yet known and, similarly, it is also unknown as to whether government will provide local authorities with any funding support in this respect.
- 7.3 The cost of collection and recovery across the council is not expected to change significantly, however, there is likely to be a need for collection and recovery roles, including enforcement roles, to be realigned with the proposed policy approach which will be managed as normal through the council's Organisation Change Management Framework including consultation with staff and trade unions where appropriate.

Finance Officer Consulted: Nigel Manvell

Date: 11/02/2021

Legal Implications:

- 7.4 It is a requirement that local authorities should seek to recover outstanding debt wherever possible. The method used by local authorities is currently (and subject to existing legislation) within their discretion. For instance, there is no requirement to use committal orders to enforce debt, that is simply an option amongst others.
- 7.5 As is indicated in the report the Government is considering statutory reform to some elements of debt recovery and the public sector. This is to be finalised. It is not envisaged that this will change the enforcement policy as this report seeks (as far as possible) to have identified and predict changes in proposed legislation.
- 7.6 The information sharing arrangements referred to as part of the process are compliant with current data protection law and have been checked by both the data teams and also legal services.
- 7.7 As further information on the government plan to restructure debt recovery and post Covid situation, become available it may be that part of this policy is revisited as detail become more clear.
- 7.8 It is noted that this report follows a general line of protocols and guidance across both public and private sector debt enforcement which aims to reduce use of the Court to achieve debt settlement. This policy is in accord with that trend. The recovery rates will no doubt be subject to ongoing scrutiny as part of audit functions.

Lawyer Consulted:

Simon Court

Date: 16/02/21

Equalities Implications:

- 7.9 The equality implications and mitigations are outlined in the Equalities Impact Assessment attached as appendix 2. This is not a static position and as information and evidence emerge the Corporate Debt Board will ensure the collection hubs services adapt and improve their services

Sustainability Implications:

- 7.10 The Policy objective is to ensure the council collects debt in the optimal way that sustains the council financially in providing funding for its obligations and ambitions while supporting debtors with affordable sustainable payment arrangements.

- 7.11 Best practice is moving services to more digital based platforms and desktop interaction with the customers. This will have the knock on effect of reducing the amount of paper transactions and the use of vehicles

Any Other Significant Implications:

- 7.12 None.

Crime & Disorder Implications:

- 7.13 Non-payment of council tax is not a criminal offence but under a specific law, in exceptional cases of non-payment, councils can apply for a 'committal order' where a debtor can be imprisoned for up to three months. The suggested policy revision commits the council to not applying this option, other than in exceptional circumstances where all other options have been exhausted.
- 7.14 The collection hubs and the corporate debt team are supported by the ORBIS Internal Audit Team to ensure that fraud is prevented and identified and the systems they use for collecting payments and recording customer details are secure.
- 7.15 Similarly, the collection hub and corporate debt team work with Information Governance Teams to ensure that no information is disclosed under freedom of information requests that could be used for possible criminal activity.

Risk and Opportunity Management Implications:

- 7.16 A policy based on best practice reduces the risk to the Council of failing to meet its collection targets and the impact this would have on budget projections
- 7.17 In combination with the Council's welfare support structure the policy reduces the risk of debt collection impacting on the health and financial resilience of debtors

Public Health Implications:

- 7.18 There is an evidenced link between mental health and financial stability. The best practice advocated by the Policy and the welfare support structure designed to support it are sensitive to the health issues related to debt. Recovery of debt should be at sustainable and affordable levels. Staff are trained to be aware of potential health issues and possible paths of referral. In anticipation of a post pandemic increased level of mental health issues related to financial worries a Mental Health and Debt Co-ordinator has been appointed within the Revenues & Benefits Service

Corporate / Citywide Implications:

- 7.19 These proposals are in line with the objectives of the council's Corporate Plan.

SUPPORTING DOCUMENTATION

Appendices:

1. Corporate Debt Policy
2. Equality Impact Assessment

Background Documents

Levelling Up: The case for reforming government debt collection, Money Advice Trust (November 2020)

Tackling the Corona Virus personal debt crisis, Step Change (November 2020)

Guidance for firms on the firm treatment of vulnerable customers, Financial Conduct Authority (July 2020)

Council Tax Protocol, Citizens Advice Bureau

Collection Strategies for a Digital Age, Deloitte

Collection of Council Tax Arrears Good Practice Protocol, Citizens Advice Bureau (June 2017)

Stop the Knock, Money Advice Trust (September 2019)

