



## DEBT RECOVERY POLICY

### OBJECTIVE

1.1 The objective of the Debt Recovery Policy is:

To ensure that money owed to the Comhairle is collected as soon as possible using efficient, effective and fair debt recovery procedures.

1.2 The aims of the Policy are to:

- take positive action to prevent arrears occurring, for example by maximising debtor income and providing a range of payment methods;
- take enforcement action against deliberate non-payers or those who delay payment;
- ensure prompt billing and to remind people quickly if they do not pay; and
- encourage early contact to avoid the build up of debt.

### SCOPE

2.1 This policy covers the recovery of all money owed to the Comhairle namely:

- Council Tax
- Non Domestic Rates
- Sundry Debts
- Benefits Overpayments
- Discretionary Housing Payment Overpayments
- Overpayment of employees
- Loan schemes

### CONTEXT

- 3.1 The Comhairle has a legal duty to recover all sums due efficiently and effectively. This policy ensures that collection methods are fair to all debtors, especially those on low incomes.
- 3.2 The Comhairle recognises that people and organisations do not pay their debts for a variety of reasons.
- 3.3 Some people, because of living in or on the margins of poverty, will have difficulty in paying. Some organisations may experience temporary hardship due to the local or national economic climate or cash flow problems. The Comhairle will endeavour to help by providing choices for repayment and support or onward referral to services where appropriate.
- 3.4 Some people or organisations may deliberately set out to delay or not make payments and all methods of enforcement will be used to secure payment in these cases.

- 3.5 Some people or organisations may be able to pay but do not pay because of an oversight or personal difficulties which is not a deliberate decision to avoid or delay payment. The Comhairle will seek to help such people develop a culture of payment by providing a number of ways in which payment can be made including on line payments, card payments over the telephone, and the establishment of direct debit or standing order payments.
- 3.6 Where payment difficulties arise, the need for debtors to get in touch is central to the Policy. Where a person or organisation 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 contact is not made or repayment arrangements not followed, recovery action will continue.

#### **DETERMINING LIABILITY**

- 4.1 The Council will provide clear and prompt information about bills and liabilities.
- 4.2 The information provided will show:
  - what the bill or liability is for;
  - the amount due;
  - who is liable for payment;
  - how to make payment;
  - a contact point for all enquiries.
- 4.3 All such correspondence will be clearly written without the use of jargon.
- 4.4 Where appropriate a summary of outstanding liability will be provided for debts covering multiple years or invoices.
- 4.5 Officers will ensure that, wherever possible, liability is confirmed through a contract, purchase order number, signature or other evidence confirming the request for provision of a service and a contact name where it is an organisation that will be charged.
- 4.6 Officers will ensure that changes to circumstances and applications for exemptions, benefits, discounts and/or relief are processed timeously to ensure that liability is correct.
- 4.7 An annual statement of the balance outstanding will be issued for all Comhairle loan schemes.

#### **MAKING PAYMENT AND CREDIT WORTHINESS**

- 5.1 The Comhairle will provide a number of methods of payment, including methods that do not disadvantage debtors who do not have access to bank accounts.
- 5.2 Whatever payment method is used, the funds must reach the Comhairle by the due date to ensure recovery action is not triggered.
- 5.3 Instalments or repayment arrangements must be adhered to unless prior consent is given for a variation. Where these arrangements are not adhered to the full amount will become due.
- 5.4 Where possible, payment in advance of the provision of a service should be in place. This particularly applies where the sums involved are small and therefore uneconomical to collect.
- 5.5 Before providing a discretionary service, departments are encouraged to carry out an initial check with the Revenues and Benefits Section to ascertain whether there are currently any outstanding amounts for that person or organisation. A protocol for communicating this information to departments will be used in line with data protection legislative requirements.
- 5.6 Should there be arrears owed for any debt type, the Comhairle will withhold a discretionary service until these amounts are paid in all but exceptional circumstances.
- 5.7 A repayment arrangement must be in place for any arrears due prior to the approval of a loan granted through any scheme administered by the Comhairle.

## THE RECOVERY PROCESS

6.1 This section outlines the recovery process for each type of debt.

### Council Tax and Non Domestic Rates

- 6.2 Should an account fall into arrears, the Comhairle will issue a reminder for payment. This reminder will inform the liable party(ies) that a summary warrant will be sought if no payment is received or no contact is made to discuss the repayment of arrears.
- 6.3 If payment is not made or the liable party(ies) do not make contact there is a statutory framework covering recovery action. The Comhairle will apply to the court for a summary warrant, which provides legal recognition of a debt and permits diligence (action to recover a debt) to be taken. At this stage 10% costs are added to the value of the debt.
- 6.4 For a period of up to 28 days following the granting of a summary warrant, the Comhairle's Debt Recovery team will make further efforts to contact the debtor and agree repayment terms.
- 6.5 Should this effort not result in the payment of arrears or a repayment plan being agreed the account will be passed to the Comhairle's Sheriff Officers. The Sheriff Officers will make attempts to recover the debt before resorting to further legal action. Where diligence is appropriate, Sheriff Officers are likely to seek an arrestment.
- 6.6 These are of two types of arrestment:

**Earnings arrestment**      Where it is known that a debtor is working, an earnings arrestment may be put in place, whereby deductions are made from the debtor's wages or salary to repay the debt.

**Bank arrestment**      Where details of a debtor's bank account are known, a bank arrestment may be put in place, whereby the bank account is frozen and any money in it may be used to pay off the debt.

- 6.7 Where arrestment is unsuccessful and circumstances are exceptional, the Comhairle's Sheriff Officers may resort to an Attachment Order. This measure will only be taken in cases where it is believed that the debtor has assets which may be used to pay off the debt: An Attachment Order allows property belonging to a debtor or cash to be seized and sold to pay off the debt. Such property must be owned by the debtor but held outside the living area of their home.
- 6.8 In addition to the use of our Sheriff Officers arrears may also be passed to the Comhairle's Legal Services team for them to pursue. Action can be taken, if appropriate, to sequestrate the debtor. This would only happen if **all** other attempts to recover the debt failed.
- 6.9 The Comhairle will not seek to sequestrate liable parties who are known to be:
- Recipients of welfare benefits; or
  - Suffering from mental health or addiction problems.
- 6.10 Alternative means of recovery, for instance benefit deduction, inhibition orders, will be pursued in these cases if appropriate

### Sundry Debts

- 6.11 Sundry debts are raised for the range of services for which the Comhairle levies charges including residential care, property rent, hire of facilities and waste collection.
- 6.12 Sundry debts are also raised to recover expenses incurred in connection with the making safe of dangerous buildings.
- 6.13 If payment is not received a final reminder will be issued after 28 days.
- 6.14 If after the reminder process, a payment is not received the debt is handed over to the Debt Recovery team who will make attempts to contact the debtor and secure payment or an arrangement to pay.

- 6.15 If the Debt Recovery team is still unable to recover the debt, it will be passed to the Comhairle's Legal Services team for further action.
- 6.16 Debts will only be passed to Legal Services should the debt exceed £40. The cost effectiveness of the use of court action to recover amounts owed will be a consideration in determining the appropriate next steps to take.
- 6.17 Legal Services will issue a letter before action to the debtor informing them of the outstanding debt and what further action that will be taken by the Comhairle should they fail to pay the outstanding sum.
- 6.18 If payment is not made within the notified timescale, an application may be made to the local sheriff court for a court decree to order them to pay the debt.
- 6.19 Should payment not be received or contact made, Legal Services will apply to the local Sheriff Court for a decree which, in the case of individual not corporate debtors, will include a "time to pay direction" which the debtor can complete in order to clear the outstanding amount with regular payments. A decree is an order of the court formally finding a debtor liable to pay a sum of money to a creditor.
- 6.20 Once a decree has been given, the Comhairle can instruct a sheriff officer to serve a charge for payment.
- 6.21 The charge for payment gives the Comhairle power to recover the debt by:
- An attachment;
  - An exceptional attachment order;
  - An earnings arrestment;
  - Arrestment and action of forthcoming or sale which is an action raised for the recovery of money or property arrested in the hands of a third person;
  - Inhibition against a property lasting up to 5 years which prevents the owner from selling his property or business without first settling the debt specified in that inhibition; or
  - Sequestration where debt is £3,000 or more.
- 6.22 Payment arrangements are monitored by the Debt Recovery staff. The Debtor may set up a Trust Deed, Debt Arrangement Scheme or complete a Time to Pay Direction. This will result in the debt being repaid within a reasonable period of time, while allowing ongoing liabilities to be met.
- 6.23 Trust Deeds, Debt Arrangement Schemes and Time to Pay Directions are formal legally binding agreements whereby the debtor agrees to keep to a repayment plan, while meeting ongoing liabilities. Once the arrangements are in place the Comhairle cannot carry out diligence against a debtor in order to recover arrears outstanding.
- 6.24 Should the debtor default on the Time to Pay Direction or Decree the account will again be passed to the Legal Services Team. Further action will be taken which may include those in section 6.17.

#### Housing Benefits and Discretionary Housing Payment Overpayments

- 6.25 An overpayment is an amount of benefit which has been paid but for which there was no entitlement under the regulations. Overpayments can occur for a variety of reasons including claimants or landlords not giving the correct notification of change of circumstances or providing incorrect information to support a claim. Overpayments also arise due to delays or mistakes made by processing officers.
- 6.26 The Comhairle receives subsidy from the Government in respect of certain types of overpayment and, therefore, it is important that overpayments are correctly classified.
- 6.27 The housing benefit regulations state that any person affected by a decision relating to an overpayment must be notified in writing e.g. if recovery is to be from a landlord, a notification must be sent to the claimant and the landlord. A notification must be sent out within 14 days of the decision stating clearly the reasons for the overpayment, why it is recoverable and advising the claimant of the rights of appeal and or review.

- 6.28 If there is still entitlement to housing benefit the overpayment can be recovered from the on-going housing benefit and this will be arranged by the Revenues and Benefits team.
- 6.29 Where there is no on-going housing benefit and repayment is not received, the debt will be referred to the Debt Recovery section after 28 days has elapsed. This 28 day period is to allow for a new claim being received and helps prevent unnecessary invoices being produced. It also allows the claimant time to appeal against a decision.
- 6.30 Debt Recovery staff will review all other outstanding debt to identify any other amounts owed to the Comhairle, for example council tax arrears. This allows the consolidation of debts and a joined up approach to contact with the claimant. Repayment arrangements can be made to cover all amounts owed.
- 6.31 If no arrangement is entered into, the Debt Recovery team can request a deduction from a person's other benefits or if they are employed, from their wages where the employer is known.
- 6.32 If the Debt Recovery team is still unable to recover the debt (single or consolidated) within 28 days, it will be passed to the Sheriff Officers.

#### Overpayment of Employees

- 6.33 Overpayment of employees occurs for a number of reasons including mistaken calculations or incorrect information being used for processing.
- 6.34 Where an overpayment is identified the payroll team will calculate the amount outstanding. If the error was made by the employing department the employee's line manager will then make contact to advise them of the circumstances that led to the over payment. For payroll errors the relevant team member will make contact.
- 6.35 Employees can opt to repay immediately using a card payment or to have an adjustment made to their next pay.
- 6.36 Repayment over a longer period of time can be agreed and this will be done through the Debt Recovery team. Full repayment should be made within the same tax year that the overpayment occurred unless this places an onerous financial burden on the employee concerned.
- 6.37 Where a bulk overpayment has been made to a group of employees, departments are able to discuss and agree a repayment arrangement which would cover all affected individuals. This repayment agreement must be approved by the Director of Finance and Corporate Resources.
- 6.38 Should an employee leave the authority, a deduction up to full amount of the final net pay will be made to recover the debt. Any amount that remains outstanding will be recovered through the raising of a sundry debt invoice.
- 6.39 Where an overpayment occurs due to the continued payment of an employee who has left the employment of the Comhairle, it will be the duty of the former employee to report such an overpayment. Criminal proceedings relating to fraud may be considered if appropriate.
- 6.40 Overpayments that relate to former employees will be recovered through the raising of a sundry debt invoice.

#### **OFFSETTING**

- 7.1 The Comhairle will take steps to identify ways in which income owed can be offset against money due for payment by the Comhairle to suppliers or creditors. Where applicable this will be included in contract documentation.
- 7.2 Where an offsetting opportunity is identified, a letter will be sent to the debtor to inform them that offsetting could take place and secure their agreement to repayment of the outstanding amount(s). This may be done through offsetting the amount owed against the payment should the individual or organisation concerned wish to use this option.
- 7.3 Offsetting will not be applied to payments relating to social welfare issues or benefit payments.

## **TIME TO SETTLE**

- 8.1 Where debts are due relating to the estate of a debtor the executor may request time to pay. This period may be used to finalise the estate including arrangements relating to property.
- 8.2 The maximum time available for this provision is two calendar years from the date of death.
- 8.3 Time to settle arrangements will only be granted where the Comhairle's interests are safeguarded through a legally binding agreement with the executor of an estate.

## **TRACING**

- 9.1 The Comhairle will make use of all means available to trace debtors who owe arrears including:
  - Sheriff Officers
  - External Tracing organisations
  - Other Comhairle IT systems
  - DWP information systems
  - Local knowledge
  - Internet search (including social media).

## **CONSOLIDATION OF DEBT**

- 10.1 The Comhairle will seek to consolidate amounts outstanding to allow a single contact approach to the recovery of debt.
- 10.2 The Comhairle will strive to put in place systems to allow one repayment to be made that covers all debt owed rather than multiple standing orders, direct debits and/or cash payments.
- 10.3 Where an overpayment of benefit as a result of fraud and resulting administrative penalty form part of the amount outstanding, these amounts will be designated as priority debts. Monies paid to repay the consolidated debt will be allocated to clear these amounts first.
- 10.4 Payments made for a range of debts will attributed to those with the shorter prescription period first.
- 10.5 Where debtors agree that information can be shared, the Comhairle will work closely with Hebridean Housing Partnership to ensure repayment plans are coordinated.

## **WRITE OFFS**

- 9.1 When all attempts to collect outstanding debt have been exhausted the Comhairle will take action to write these amounts off.
- 9.2 Accounts will only be recommended for write off when there is evidence that all appropriate actions as contained within this policy have been taken including an assessment of whether the debt is uneconomical to collect.
- 9.3 A single de minimis value below which formal court recovery action will take place will be applied to all Comhairle debt.
- 9.4 Debts will be written off when they are time barred. Under Scottish law, if time passes without receiving any payment or communication from a debtor, an action for recovery may become barred

under the Prescription and Limitation (Scotland) Act 1973. These debts are completely extinguished and cannot be enforced. Once the prescriptive period expires the debt cannot be allowed as a deduction.

- 9.5 The Director of Finance and Corporate Resources has delegated authority to write off debts up to £2,000.
- 9.6 Debt over £2,000 must be presented to the Comhairle for approval.

### **MONITORING THE POLICY**

- 10.1 The implementation of this policy will be monitored using the following indicators:
  - a. Collection rates
  - b. Number of cases reaching each stage of recovery
  - c. Number of accounts where recovery is suspended due to arrangements being made
  - d. Percentage of accounts where recovery is suspended due to arrangement being made
  - e. Number of cases with arrears outstanding at the year end
  - f. Amount of arrears outstanding at year end
  - g. Arrears outstanding at year end as a percentage of total liability
  - h. Number of complaints received about the application of the Debt Recovery Policy