



COUNCIL TAX AND NON DOMESTIC RATES DEBT COLLECTION POLICY & PROCEDURES

“Making a Difference by Providing the Best”

Eastleigh Borough Council – July 2019

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1 INTRODUCTION

The Revenues Section collects money due for Council Tax (CT) and National Non-Domestic Rates (NNDR).

Currently high collection rates are achieved for both Council Tax & NNDR thanks to robust collection procedures supplemented by the formalised collection procedures detailed in this document.

In all cases staff will act in accordance with relevant legislation, aim to issue bills promptly, treat all residents fairly, promote the take up of welfare benefits, Council Tax Support and discounts and encourage people to pay promptly and regularly.

2 LEGISLATION

Council Tax: Local Government Finance Act 1992 (as amended by Local Government Finance Act 2012)
The Council Tax (Administration and Enforcement) Regulations 1992 (as amended)
Council Tax Reduction Scheme (Prescribed Requirement) (England) Regulation 2012 (as amended)

NNDR: Local Government Finance Act 1988 (as amended)
The Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989

3 POLICY AIMS

Eastleigh Borough Council must demonstrate that it undertakes the administration and recovery of all debts in an economical, efficient and effective manner.

In doing so, the Council will:

- Take positive action to prevent arrears occurring by maximising income recovery and providing a range of payment methods and signposting to local debt advice provision such as the CAB
- Take enforcement action against deliberate non-payers or those who delay payment
- Ensure bills are issued promptly and remind customers early when they do not pay
- Encourage customers to make early contact with us to avoid build up of debt.
- Discuss payment options with people who have fallen or are likely to fall into arrears.

- Work with customers and their representatives to set reasonable payment levels that can be maintained whilst ensuring the debt is recovered in a reasonable timescale.

The Aims of this Policy are to:

- be a guide to all staff involved in the recovery process
- set out a clear debt recovery strategy
- demonstrate the Council's commitment to deliver a quality service to customers
- maximise revenue to the Authority and help reduce the loss from write-off of debts
- fulfil the Council's statutory obligations to collect Council Tax and Business Rates
- be consistent and fair in our dealings, regardless of age, gender, race or disability
- listen to and communicate with the public and treat them with due respect and courtesy, taking full account of the Council's Equal Opportunities Policy
- assist in tackling poverty by offering the right advice to enable people to maximise their income and to help prevent the build-up of debt

4 POLICY OBJECTIVE

To ensure that all income due to the Council is collected in an economical, efficient and cost effective manner in the interest of Council Customers and businesses of the Borough.

How will we achieve our policy objective:

In order to achieve the above we will ensure the following principles are adhered to:

- Consider that customers have a responsibility and duty to pay.
- Aim to identify those who can pay but won't or who delay payment, so that recovery action can be taken accordingly.
- Actively encourage contact at every stage of the collection and recovery process
- Aim to help customers maximise their income.
- Acknowledge the need to provide a service that is effective but when necessary sensitive to customer needs.
- Acknowledge our responsibility to collect revenue effectively.
- Ensure that payment arrangements reflect the ability to pay whilst ensuring the debt is fully paid.
- Expect Priority Debts (see appendix 1) to be given priority over other debts owed.
- Acknowledge the role of the recognised advice agencies and work with such agencies, whenever possible.

5 CODE OF PRACTICE

In order to have an effective debt collection recovery policy our customers need to be provided with clear and prompt information about bills and liabilities. To ensure this practice our information will show:

- What the bill or liability is for.
- The total amount due.
- How and where to make payments
- Contact point for all enquiries.
- Correspondence clearly written, without the use of jargon, where possible and contain, where appropriate, information about where to get independent advice.

The Council will also:

- Inform the public of their entitlement to Council Tax Support, discounts, reliefs and exemptions.
- Try to ensure that maximum take-up of support occurs and that net bills/liabilities are issued.
- Inform customers of the general availability of income-related benefits.
- Train staff who deal with the public to be aware of the support that is available so as to ensure maximum take-up.
- Train staff so that they can signpost customers to sources of affordable credit
- Advise customers where they can get independent advice with financial problems, for example Citizens' Advice Bureau.

6 SCOPE OF THE POLICY

This policy applies to all staff in and associated within the Revenues collection and to any external company such as the Civil Enforcement Agency and insolvency/bankruptcy practitioners involved in the collection of Council Tax or Non Domestic Rates due to the Council.

7 INFORMATION AND ADVICE TO CHARGE-PAYERS

Information and Advice to Council Customers

The Council encloses information to all customers with the annual Council Tax bill, which covers the following areas:

- Valuation Bands
- Discounts
- Reductions for those with disabilities
- Exempt Dwellings
- Council Tax Support

- Appeals
- How the Council Tax is spent – links are included to website.

Information and Advice to Business Ratepayers

The Council encloses information to all Business Ratepayers with the annual bill, which covers the following areas:

- Rateable Values
- Relief's and Exemptions (see below for information on Hardship relief)
- Appeals
- How Council Tax is spent – links are included to website

Application for NDR Hardship Relief

Where a business rate customer indicates that they are suffering financial hardship they will be given advice on making an application for Hardship relief.

All applications for hardship relief will be considered on an individual basis by the Senior Revenues Specialist based on:

- Powers for Hardship relief given in S49 LGFA 1988
- The guidance provided by the ODPM in December 2002 and any subsequent guidance issued
- Remission/reduction of rates on the grounds of hardship are the exception rather than the rule
- Relevant Case law – Windsor Securities Ltd (1978), C Aplin (1884), Huxminor Investment Developments Ltd (1984) & Mustaq (1995)
- An assessment of the likelihood of a significant increase in the levels of unemployment in the area if they were to go out of business
- Availability of other business covering the same service
- Financial Hardship must not be the only consideration

8 HOW TO MAKE PAYMENTS TO THE COUNCIL

It is acknowledged that the easier it is to pay, the more likely it is that payment will be made. Eastleigh Borough Council therefore provides various methods of payment and details of these options are included on each bill.

Staff should encourage payment by **direct debit** as a first option as it is the most economical and effective payment option.

The different methods used are as follows:

- The normal payment terms are 10 monthly instalments from 6th April to 6th January. However, since April 2013 customers can request payment by 12

monthly instalments. Instalments are adjusted according to regulations for Council Tax and NDR for accounts issued after April.

- Direct Debit payers have the choice to pay on the 7th or the 21st of the month.
- Customers can choose how payments are made i.e. monthly, half yearly or annually.
- Customers can pay by standing order, cash, cheque, credit and debit card.
- Payments can be accepted by post, via the internet or by telephone.
- Where payments are made, our aim, wherever possible, is to prevent people having to incur additional costs to pay the bill.
- Whatever the method of payment used customers must ensure that payments must reach the Council by the due date. The instalment dates are shown on each bill.

Staff will actively encourage customers to contact them early if they are having difficulty paying and, when appropriate, advise them where to get independent advice.

To try and prevent problems of debt occurring customers are encouraged to contact the Council as soon as they realise they may have difficulty paying. Many are unaware of their rights and responsibilities and of the availability of the variety of payment arrangements.

When customers make contact with Council staff they will:

Check that the amount they are paying is correct ensuring that all relevant support, discounts, reliefs and exemptions are being claimed and advise on the most appropriate method of payment.

At this point, customers may also be advised to contact an independent advice agency, for further guidance and help.

9 TYPES OF ENFORCEMENT ACTION

Recovery of arrears of Council Tax and Non-Domestic Rates is through the Magistrates Court. Following non-payment of monthly statutory instalments the full years charge becomes due.

Following the granting of a liability order by the court, Council Tax can be recovered by means of:

- Attachment of earnings.
- Deductions from various benefits
- Civil Enforcement Agency action
- Insolvency proceedings
- Charging order proceedings
- Committal applications following non-successful Civil Enforcement Agency action.
- Bankruptcy

Non-Domestic Rates can be recovered from a customer or company by Civil Enforcement Agency action, insolvency proceedings and, in the case of sole traders, by committal action following non-successful Civil Enforcement Agency action.

Contact Points

Appropriate information is included on all documents to enable the customer to contact the relevant Council officer. Standard documents are sent out displaying the action taken and they include relevant postal, fax, telephone and email contact points.

When is Enforcement Action?

Where payment is not made the Council sends reminder letters stating that payment is to be made within seven days (sometimes this is extended to ten days at the discretion of the Revenues Service).

In the case of Council Tax and Non-Domestic Rates where payment is not made the right to pay by monthly instalments is lost and the full year's charge becomes due.

A summons to appear at the Magistrates' Court is sent and an application made for a Liability Order for any balance outstanding. These actions involve costs (currently £95.00) being added to the account.

Further action as outlined above can be taken. Appendix 2 and 3 outlines the recovery process that is followed in respect of the collection of Council Tax and Non-Domestic Rates.

In all cases the Council aim is to make a suitable repayment plan to avoid such action.

10 CONSISTENCY AND PROPORTIONALITY

Every measure is taken to ensure all people of like circumstances are treated equally, with respect and courtesy taking account of the Council's Equal Opportunities Policy.

Procedures are in place for arrangements for payment outside the statutory process and customers requiring extra time to pay are all treated in the same manner e.g. payment may be spread over a longer fixed period. There is no legal duty for the Council to remit any amount due, except where the debt is found to be irrecoverable owing to bankruptcy, death, inability to trace the customer or by a decision of the court.

Throughout the process and where applicable, all debts owed to the Council will be considered and suitable arrangements made in order to clear all debts.

All actions are carried out having regard to the provisions of the Human Rights Act 1998.

11 MAKING ARRANGEMENTS FOR PEOPLE IN ARREARS

See full guideline in Appendix 5

Staff will:

- Encourage contact from customers at an early stage in the recovery process
- Make arrangements within the guidelines (parameters) given to them
- Refer debts where arrangements cannot be made within guidelines to a Revenues Specialist for review.

It is important to remind the customer to contact the Council if they anticipate problems in meeting any instalment due date. They are advised not to wait until they have received a written response to their offer of payment, but to start and maintain regular payment as soon as possible and to continue to do so.

Arrangements made by Advice Agencies

- Where an arrangement is requested by a recognised advice agency, an Income and Expenditure form should normally be provided.
- Where a customer appears to have complex benefit or money advice problems, staff will refer them to an appropriate agency.

Obtaining Details

- Staff should try to get as much detail as possible of a customer's circumstances in order to make the best assessment of their ability to pay.
- If a customer refuses to divulge any information this could be used as a reason for refusing to make an arrangement.

Documentary Evidence

- In some cases it may be necessary to request documentary evidence to confirm income and outgoings prior to making a payment arrangement. Customers should not be asked for documentary evidence unless it is absolutely necessary or where there is doubt about the expenditure details given.
- If necessary the customer should be told of the particular items that require confirmation and given a reasonable time limit to provide them.
- The customer should be advised that if the evidence is not produced within the agreed timescale the offer of payment may be rejected and further action could be taken.

All information collected is governed by the Data Protection Act 2018 (GDPR) and the Council has a procedure and policy in place to comply with the Act.

Monitoring Payment Arrangements

- All payment arrangements will be closely monitored.
- Prompt recovery action will be taken in respect of missed or late payments.
- The responsibility for making sure that payment reaches the account by the due date remains with the customer.
- The customer should be reminded that the date on which instalments are to be paid is the final date on which money should reach the Council Tax account. The customer must be reminded to allow sufficient time for the payment to reach the Council by the due date.

When Payment Arrangements are not maintained

- It is important to ensure that where arrangements have not been maintained that prompt action is taken to try and bring the arrangement back up-to-date.
- The Council will require the original agreement to be brought up-to-date within a short timescale. If there has been a significant change in circumstances, it may be possible to renegotiate a further arrangement.

12 ELDERLY/INFIRM CUSTOMERS

The Council is obliged to pursue all debts irrespective of a customer's age, infirmity, etc. However, the Council recognises that some groups of people may have difficulty understanding or dealing with their financial problems.

When such cases are identified and there has been no contact from the customer, a member of staff will, if appropriate, after discussion with the relevant Manager, visit the customer in their home. When a visit is made, the customer will be asked if they would like to have third party (e.g. a close relative or a social worker or a benefit advice worker) present during the discussions.

The purpose of the visit will be to maximise income where possible by the application of any additional support or reductions. Assistance will be given in the completion of any forms and a "Means Enquiry" income and expenditure form will be completed.

A suitable plan should be agreed along with the payment method most convenient to the customer's circumstances. Once the payment plan is agreed it will be regularly monitored and when necessary, may be reviewed.

13 CHANGES OF ADDRESS AND GONE AWAYS

If correspondence is returned undelivered and marked 'Gone Away' or similar, and a forwarding address is not already known, efforts are made to find a new address for the customer.

Officers will check Council Tax records to ascertain whether a new account has been set up at another address.

If a new address is found, the system is amended to show the revised details and recovery will recommence at whatever stage it had reached when contact was lost.

If the customer cannot be traced, appropriate enquiries will be made via online search facilities, subject to the level of debt,. If enquiries result in an 'unable to trace' result, then action under section 15 below should be considered.

14 CIVIL ENFORCEMENT AGENCY'S CODE OF PRACTICE

Civil Enforcement Agents (CEA) work for the Authority under strict guidelines and must adhere to government legislation in regard to the collection of debts and the raising and collection of fees.

Collection of debts by CEAs are closely monitored to ensure they are collected in an efficient and effective manner in accordance with the Service Level Agreement and the legislation.

From April 2014 the Civil Enforcement Agency collects their set up costs of £75.00 first and then any further monies collected are shared between the Council and the Civil Enforcement Agency on a pro-rata basis according to the level of debt.

15 WRITE OFF POLICY

It is essential and good accounting practice that monies are written-off in a timely manner once it has been established that the debt cannot be recovered.

The objective of the policy in Appendix 4 is to strike a balance between protecting the Council's financial position and making sure that any anti-poverty issues are addressed.

There are various reasons for a debt being passed for write-off and several are listed below:

- The customer is deceased and there are insufficient funds with which to discharge the debt.
- The customer has gone away or there is no trace.
- The customer is bankrupt (a claim in bankruptcy is submitted but the debt written off for administration purposes - if payments are received from the receiver the debt is written on to the account accordingly).
- It is uneconomical to pursue the debt.

Write-offs will be carried out in accordance with the Council's Standing Orders and Financial Regulations, which are in force at that time.

All requests for write-offs must be approved by the Senior Revenues Specialist.

16 RIGHTS OF APPEAL

Customer can take the following steps if they feel that they had been dealt with in an inappropriate manner that has caused them to seek a review of the decision made, as follows:

- *Valuation Tribunal*: For those who believe the Council has acted incorrectly on a Council Tax billing matter.
- *Appeal direct to the Council*: where the customer believes that the debt is not due or a wrong calculation is made

- *Magistrates Court*. For those who are aggrieved by the recovery process for Council Tax and Non-Domestic Rates and Non-Domestic Rates payers who believe the Council acted incorrectly on a billing matter.

17 COMPLAINTS

Eastleigh Borough Council also operates a corporate complaints system. This is available where any customer is not satisfied with the standard of a Council service, and has not been able to resolve his/her complaint with the relevant divisional unit.

The corporate complaints procedure - provides the Council with the opportunity to investigate and provide a remedy in circumstances where the Council is alleged to have been guilty of "maladministration" which has caused injustice (and where there is no other reasonable avenue available to the complainant to appeal or seek redress). It is important to note, however, that the corporate complaints system cannot entertain objections against the merits of a decision which has been properly taken and which the complainant does not agree with.

Local Government Ombudsman - In the event that the complainant remains dissatisfied after the Council has investigated the complaint, the complainant may refer his/her complaint to the Local Government Ombudsman, who is independent of the Council. It must be emphasised that the Ombudsman will not normally consider a complaint where more than 12 months has elapsed since the alleged act/omission.

18 ANNUAL REVIEWS

It is important that the Revenue Section performance is monitored so that it can assess the impact and effectiveness of its Policies and ensure that those Policies are assisting the Council in meeting its aims and objectives in each respective service area.

The Debt Collection Policy will be reviewed annually alongside other policies, the Service Plan and will provide a basis for measuring implementation and improving those policies.

It is the responsibility of the Senior Revenue Specialist to ensure the above policy is effective through their monitoring and complaints procedure, taking into account the indicators listed below:

- Percentage of CT & NDR collected each month with a comparison with the previous year's collection
- Number of cases reaching each stage of recovery
- Number of cases where attachments of benefit/earnings are made
- Number of cases being referred to the Civil Enforcement Agencies
- Number of cases with arrears outstanding at year end

- Amount of arrears outstanding at year end
- Number of complaints received where policy is not being followed
- Audit checks

19 FUTURE ACTIONS

In order to continue to develop the above “Debt Collection Policy” we may need to consider more development in the areas specified below:

- Establish a good relationship built on trust between the different departments within the Council and advice agencies.
- Monitor and review links with the Department of Work and Pensions (DWP) to ensure deductions from benefit are actioned promptly.
- Continue to review the use and action of Civil Enforcement Agency.
- Continue to review the use of any debt counselling service provided by the Citizens Advice Bureau (CAB).
- Consider recommendations that could be made to the Government to amend appropriate legislation.
- Make use of advances in information technology to provide alternative means of communicating with stakeholders and customers.
- Use the Internet to publish information and provide a means for people to contact the Council out of normal office hours.

Priority Debt List

What is a Priority Debt?

There are many types of debt, but those considered as “priority” debts are those debts owed to creditors who can take the strongest legal action against a customer who does not pay.

It is not the size of the debt that makes it a priority but what creditors can do to recover their money. Customers are often but not always aware of the consequences of failure to pay and frequently pay to whoever shouts the loudest.

Type of Debt	Consequences of failure to pay
Priority 1 Debts	
Rent Arrears	Can result in eviction
Mortgage arrears	Can result in repossession
Council Tax	Can result in civil enforcement agent action, attachment of earnings or bankruptcy or ultimately committal to prison
Business Rates	Can result in civil enforcement agent action, bankruptcy or ultimately committal to prison
Other Secured Loans	Can result in loss of home
Priority 2 Debts	
Income Tax & VAT	Can result in bankruptcy or imprisonment
Maintenance or child support	Can result in civil enforcement agent action or imprisonment
Benefit overpayments	Can result in deductions from on-going rent/benefit
Fines or compensation/Costs Orders	Can result in imprisonment
County Court Judgements	Can result in civil enforcement agent action, attachment of earnings or bankruptcy
Fuel and water debts	Can no longer result in disconnection of the service, but will result in the installation of a prepayment meter which is up rated to collect payment of the arrears.
Penalty Charge Notices (parking contraventions)	Can result in civil enforcement agent action
Non Priority Debts	
Credit/store cards	Unsecured personal loans
Bank overdrafts	Credit/interest free/hire purchase agreements
Catalogue debts	Money borrowed from friends & family

Regulations provide that if deductions are to be made from other Benefits or Pension Credit, but there is not enough Benefit or Pension Credit to allow all deductions, the priority order from the DWP to clear the debt will be as follows:

- Housing
- Fuel
- Water
- Council Tax arrears.

Only three deductions at a time are allowed to recover arrears of housing, water or Council Tax from Benefits and Pension Credit.

Direct payments may only be made in respect of one application for Council Tax arrears at any one time, and applications are dealt with in chronological order. In some cases, therefore, it will not be possible for deductions to be made.

COUNCIL TAX RECOVERY

The following notes cover all steps starting from the formal reminder. This will arise where amounts remain unpaid and a satisfactory arrangement cannot be agreed without taking further action and where previous such arrangements have been broken.

Reminder/Final Notices/Second Final Notices

These notices will be sent when payment plans are not kept to or where arrangements are broken and are in two stages.

- 1) Reminder/Final Notices are issued when there is at least one instalment outstanding. This will normally be at least 7 days after an instalment has become due, the notice gives the customer 7 days in which to bring the account up to date and if the customer fails to do so a further 7 days to pay the full amount.
- 2) Second Reminders are issued to customers who have previously brought their account up to date but have failed to pay any subsequent instalment. Again the notice gives the customer 7 days in which to bring the account up to date and if the customer fails to do so the statutory right to pay by instalments is withdrawn and the customer is given a further 7 days to pay the full amount.
- 3) Final Notices for the full amount will be issued where the 'full amount' in (1) & (2) has changed or where the customer who previously brought their account up-to-date failed for a 3rd time to pay a subsequent instalment. The notice demands the full amount within 7 days.

Liability Order Summons

If payment is not received in accordance with the above a summons is issued for the full amount outstanding plus costs. The customer is always encouraged to contact the Council to discuss a payment arrangement before the hearing date.

If a satisfactory arrangement is made after the issue of a summons, a liability order will be obtained but no further action will be taken providing the arrangement is kept.

On application for a Liability Order the customer is not required to be present in court but does have the right to defend the action in person if they wish and they have a valid defence. The Magistrates powers are severely limited at this stage. If the debt is outstanding and the Council has shown that the legal processes have been followed, the court has no alternative but to issue the Order. At this stage they cannot take the customers personal or financial circumstances into account. This

position is made clear in notifications issued, and reiterated by Council staff to those customers who attend court.

Liability Order Notice

Once a liability order has been obtained the customer is informed of this, together with a request for information. This is sent requiring the customer to give details of income and employment status. The customer is legally required to complete and return the form. It is important that these forms are returned as the information will enable the Council to consider the most appropriate form of further action which could be any of the following: -

a) Civil Enforcement Agency Action

Where no suitable payment arrangement has been made or an arrangement has been made but payments were not received in accordance with this agreement; and/or no suitable alternative enforcement action such as attachment of Benefit or Attachment of earnings action can be taken, the debt will be referred to the Council's CEA.

Prior to this action being taken the debtor will be sent a DAY14 Income Questionnaire at least 14 days prior to the debt being passed to the CEA. This letter will clearly detail the additional fees that will be raised if the debt is passed to the CEA.

See Appendix 6 for more detailed action on CIVIL ENFORCEMENT ACTION

b) Attachment of Earnings

This course of action is applicable to those who are in regular employment but not self-employed.

Employers are legally required to comply with the order. Scales of deductions are set by Central Government and copies of the appropriate regulations are available from the Council's website or a hard copy is available on request.

The employer is permitted to make an additional deduction of £1 to cover administration fees each time a deduction is made from the employee.

c) Deductions from Benefits

Deductions are made by the local Department of Work and Pensions office following notice by the Council to do so.

d) Committal Proceedings (Means Enquiry)

This stage can only apply where the liability order has been subject to the distraint procedures, they have proven ineffective and the Civil Enforcement Agency has completed a Nulla Bona certificate.

Upon receipt of a Nulla Bona certificate from the Civil Enforcement Agency certifying that they have made attempts to obtain payment and have been unable to do so, a court file and a means enquiry notice are prepared. If contact is made prior to the issue of a notice and a payment arrangement made then no further action is taken whilst the arrangement is maintained.

e) Means Notice Issued

A means notice is issued including additional costs as set out in the regulations. At any time up to and including the day of the hearing a reasonable arrangement can be made to clear the debt. If this happens the case will be withdrawn from court. These arrangements will be reviewed and failure to maintain the agreement will result in a further Means Notice issued.

f) Failure to Appear

If the customer fails to appear then the Court is asked to issue a warrant of arrest with bail, including additional costs in accordance with the regulations. The warrant of arrest is passed to the Court Warrant office and an officer will execute it and bail the customer to a court date. Provided they attend on the new court date then the procedures will be the same as if they had answered the initial summons. Failure to appear, having been bailed, will result in an application for a warrant without bail, which includes further costs in accordance with the regulations; this is then passed to the Court Warrant Officers for execution.

g) Appearance in Court

The customer should attend the court in answer to the means notice, unless an arrangement for payment has been agreed. In practice most customers making an appearance do so as a result of the execution of a warrant without bail or where there is a previous history of broken arrangements. An enquiry into means and conduct must be held and the customer will be asked to give evidence as to the reasons for non-payment and their financial situation at the time the debt was due and also for their current financial position. The council's representative can be asked questions by both the customer and the court, and also can question the customer.

Depending on the evidence given, the Council representative will make application to the court for: -

- 1) A warrant of commitment (which if granted would usually be suspended on terms of payment)
- 2) The case to be withdrawn for attachment of earnings or deduction from income support
- 3) In exceptional circumstances remind the court of the power of remission.

The court then considers the Council's application taking into account all the evidence heard.

h) Means Enquiry Decisions.

The Magistrates decision could be:

- 1) To issue a warrant of committal forthwith and the customer would go straight to prison.
- 2) To issue a warrant of committal and suspend it on terms of payments of sums, which the court considers reasonable taking into account the evidence heard.
- 3) To dismiss the case.
- 4) To remit all or part of the debt.

In respect of a Magistrate decision dealing with items 3 or 4 above, the customer, must attend court again if the customer's circumstances have changed. This is the case unless the Magistrates decision has been to remit the whole debt. In these circumstances, the case is set aside to be written off at a later stage.

Costs are applied for at the hearing in accordance with the amounts set out in the regulations. The court considers the application and awards such costs as it feels are reasonable.

Bankruptcy/Liquidation

This action can be taken against customers and companies who owe debts in excess of £750.

A statutory demand must be issued giving the customer 21 days in which to pay. Once this Demand is issued the maximum period an arrangement can last is 4 months this being the time that this document is valid. If payment is not made then a Petition in Bankruptcy will be issued. Once this is served the customer incurs legal fees and the costs of the council in production of documentation and staff time. The customer must either pay the debt in full with costs or attend the court hearing.

Bankruptcy/Liquidation proceeding will only be taken where it has been established that there are assets available or where the customer is a home owner/company director etc.

Charging Orders

These can be applied where a debt is owed to the Council in excess of £1,000. An application is made to the County Court and once granted the charge is registered against the property owned by the customer and therefore sale cannot take place without settlement of the outstanding debt.

NON-DOMESTIC RATES CIVIL ENFORCEMENT AGENTS ACTION

The following notes cover all steps starting from the formal reminder. This will arise where amounts remain unpaid and a satisfactory arrangement cannot be agreed without taking further action and where previous such arrangements have been broken.

Further Notice/Reminder

These notices will be sent when payment plans are not kept to or where arrangements are broken and are issued when there is at least one instalment outstanding. The notice gives the customer 7 days in which to bring the account up to date and if the customer fails to do so a further 7 days to pay the full amount.

Liability Order Summons

If payment is not received in accordance with the above a summons will be issued for the full amount due plus costs. The customer is again encouraged to contact the Council to discuss a payment arrangement before the hearing date.

If a satisfactory arrangement is made after the issue of a summons, a liability order with additional costs will be obtained but no further action will be taken providing the arrangement is kept.

On application for a liability order the customer is not required to be present in court but does have the right to defend the action in person if they wish. The Magistrates powers are severely limited at this stage. If the debt is due and outstanding and the Council has shown that the legal processes have been followed, they have no alternative but to issue the order. At this stage they cannot take the company representative's personal or financial circumstances into account. This position is made clear in notifications issued and reiterated by Council staff to those customers who attend court.

Civil Enforcement Agency Warning Letter

Once a liability order has been obtained the customer is immediately informed of this fact by the issue of a 7 day warning letter, which sets out the action that could follow unless a suitable payment arrangement is made. These are: -

a) Civil Enforcement Agency Action

Where no suitable payment arrangement has been made or an arrangement has been made but payments were not received in accordance with this agreement;

and/or no suitable alternative enforcement action such as Bankruptcy can be taken, the debt will be referred to the Council's CEA.

Prior to this action being taken the debtor will be sent a 7 DAY warning letter at least 7 days prior to the debt being passed to the CEA. This letter will clearly detail the additional fees that will be raised if the debt is passed to the CEA.

See Appendix 6 for more detailed action on CIVIL ENFORCEMENT ACTION

b) Committal Proceedings (Means Enquiry)

This stage can only apply where the liability order has been subject to the distraint procedures, they have proven ineffective and the Civil Enforcement Agency has completed a Nulla Bona certificate. Proceedings can only be taken against customers and not against limited companies.

Upon receipt of a Nulla Bona certificate from the Civil Enforcement Agency certifying that they have made attempts to obtain payment and have been unable to do so, a court file and a means enquiry summons are prepared. If any contact is made prior to the issue of a summons and a payment arrangement made then no further action is taken whilst the arrangement is maintained.

c) Means Notice Issued

A means notice is issued including additional costs as set out in the regulations. At any time up to and including the day of the hearing a reasonable arrangement can be made to clear the debt. If this happens the case will be withdrawn from court. These arrangements will be reviewed and failure to maintain the agreement will result in a further Means Notice issued.

d) Failure to Appear

If the customer fails to appear then the Court is asked to issue a warrant of arrest with bail, including additional costs in accordance with the regulations. Failure to appear, having been bailed, will result in an application for a warrant without bail, which includes further costs in accordance with the regulations; this is then passed to the Court Warrant Officer for execution.

e) Appearance in Court

The customer should attend the court in answer to the means notice, unless an arrangement for payment has been agreed. In practice most customers making an appearance do so as a result of the execution of a warrant without bail or where there is a previous history of broken arrangements. An enquiry into means and conduct must be held and the customer will be asked to give evidence as to the reasons for non-payment and their financial situation at the time the debt was due and also for

their current financial position. The Council's representative can be asked questions by both the customer and the court, and also can question the customer.

Depending on the evidence given the Council representative will make application to the court for: -

- 1) A warrant of commitment (which if granted would usually be suspended on terms of payment)
- 2) In exceptional circumstances remind the court of the power of remission.

The court then considers the Council's application taking into account all the evidence heard.

f) Means Enquiry Decisions.

The Magistrates decision could be: -

- 1) To issue a warrant of committal forthwith in which case the customer would go straight to prison.
- 2) To issue a warrant of committal and suspend it on terms of payment, which is set at a sum that the court considers reasonable taking into account the evidence, heard.
- 3) To dismiss the case.
- 4) To remit all or part of the debt.

Where Magistrates make a decision as in items 3 or 4 above, the Council can review the application at court on the grounds that the circumstances of the customer have changed. This is the case, unless the Magistrates decision has been to remit the whole debt. In these circumstances, the case is set aside to be written off at a later stage.

Costs are applied for at the hearing and the court considers the application and awards such costs as it feels are reasonable.

Bankruptcy/Liquidation

As committal action cannot be taken against limited companies liquidation proceedings are the only alternative course of action available in order to secure payment.

Action can be taken against customers and companies who owe debts in excess of £750. A statutory demand must be issued giving the customer 21 days in which to

pay. The object is to obtain payment of the debt before the bankruptcy/liquidation hearing takes place.

Security for Unpaid Rates – (Charging Order)

The ratepayer and the Council may enter into an agreement whereby a charge may be put on the property. The agreement cannot last for longer than 3 years.

COUNCIL TAX & NON DOMESTIC RATES WRITE OFF POLICY AND PROCEDURE

Introduction

Any Write-Off policy must be effective and lay down sufficient guidelines, without being too prescriptive. It is essential and good accounting practice that monies are written off in a timely manner once it has been established that the debt is unlikely to be recovered.

The objective of this policy is to strike a balance between protecting the Council's financial position and making sure that any anti-poverty issues are addressed.

Write-Offs will be carried out in accordance with the Council's Standing Orders and Financial Regulations, which are in force at that time

Policy

When it is considered that all possible recovery action has been exhausted (see collection and recovery procedures) then write-off will be considered in line with the following guidelines.

Reasons for Write Off

The following are considered to be mandatory reasons for Write Off:

- Bankruptcy.
- Voluntary arrangement/ Admin Orders.
- Debts, which cannot be legally enforced.

There will also be instances where recovery cannot be enforced because:

- The customer cannot be traced
- Where it is deemed inappropriate to recover the monies on the grounds that it is uneconomical to collect based on the value of the debt

Where a debt is uneconomical to pursue

Factors that should influence the decision whether a debt is economical to pursue are:

- The size and age of debt in relation to where it is in the recovery process and the costs of certain action which could be taken to try and secure recovery
- Any previous action taken on the case and the results

- Whether we know the current address of the customer
- When the last action was taken to try and recover the debt
- if all necessary documents are available to support the recovery of the debt

From here a decision will be made as to whether it is appropriate for the Council to proceed with certain action and whether it is economically viable to do so. This decision will be taken by the Senior Revenues Specialist or Revenues Specialist.

Where the debt is legally recoverable but the Council feels it inappropriate to pursue its recovery

At any stages of the enforcement process, it may be considered appropriate to submit a debt for write off in accordance with financial regulations on the grounds of hardship having regard to the following factors:

- The customer's age and state of health
- The customer's financial position and responsibilities

All write-offs will be carried out in accordance with the Council's Standing Orders and Financial Regulations, which are in force at that time.

Submissions Procedure

Following the approval of the Senior Revenues Specialist, all debts will be written off the Capita IT system. (In order to help with administration of the Academy System this includes debts over £5000 although formal Cabinet approval must be obtained for these debts as per Financial Regulations and Standing Order requirement)

As mentioned earlier approval at Cabinet must be obtained for debts over £5000 that require write-off. The Senior Revenues Specialist will produce an annual report summarising all debts under £5000 that have been either written off, debts where bankruptcy/liquidation proceedings have been taken, reversed or recovered debts together with a schedule of debts over £5000 which require write-off approval.

Following Cabinet's decision, any debts not approved by Cabinet will be reinstated for further action if necessary.

Reversal of Written Off debts

Where a debt has been previously written off and the Council receives or obtains information about the customer that would enable the collection of the debt, the written off amount should be reversed and the debt pursued. This action will only be taken where the debt can still legally be enforced within the statutory time limits.

Appendix 5

STAFF GUIDELINES FOR PAYMENT ARRANGEMENTS

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Under the Council Tax Admin & Enforcement Regulations (SI 1992/613), Council Customers have a statutory right to pay their Council Tax liability by instalments. The details of the scheme are laid down in Schedule 1 Part 1 of these regulations and are summarised as follows:

The charge is payable over 10 instalments or by written request over 12 instalments if the demand is issued before 30 April in the financial year.

- If the demand is issued after 30 April but before 1 January, the number of instalments will be ONE less than the number of whole months remaining in the relevant year
- The amount of each instalment must be equal amounts and a multiple of £1
- The first instalment is adjusted to accommodate any “balance”
- The amount is due in ONE instalment if the demand is issued between 1 January and 31 March
- The instalment should not be less than £5
- Maximum number of multiples of £5 must be used where the instalments would be less than £5 and the amount due is more than £10

Regulations 23 and 33 detail the requirement for a reminder notice if an instalment is not paid and the loss of the right to pay by instalments if payment is not made after a first or second reminder or there is a third default on the payment of the instalments.

Ultimately a summons will be issued for the whole amount that remains outstanding and a liability order will be obtained which “secures” the debt and other options become available to recover the debt.

The objective of any payment arrangement is to clear the debt within the current financial year to prevent arrears being carried into a subsequent year.

1) Payment Arrangement where debt remains under statutory instalment scheme

The following options are available to clear the debt within the current financial year:

- The arrangement manager will automatically recalculate the amount owed for the current Tax year and spread it over the remaining months within this Tax year to be paid by 31st March.
- Add the outstanding instalment to the subsequent instalment that becomes due.

- Defer the outstanding instalment to fall due after the statutory instalments have finished (provided the deferred instalment does not fall within the next financial year- e.g. February or March).
- The customer is to be informed that the instalments will be reviewed on a regular basis and given information as to the amount of the new instalment at the time the arrangement is made so that they have advanced notice of the increase. It is the customer's responsibility to advise if their financial circumstances change to enable them to pay more.

No more than THREE payment arrangements (over and above the statutory payment scheme) are to be agreed within any 12 months UNLESS there are extenuating circumstances. This will be determined by a Revenues Specialist, or experienced CMO with the relevant account permissions.

2) Payment Arrangement on issue of Reminder

Options will be as detailed in (1) above.

If the arrangement is made on the issue of a statutory first reminder, and the arrangement subsequently defaults, a second statutory reminder will be issued. The note on the account notepad will alert staff to the fact that a previous arrangement was made and the instalments altered from the statutory instalment scheme (the arrangement manager now details the number of defaults and detailed information).

If the arrangement has been made on the issue of a second statutory reminder, and then subsequently defaults, the customer will lose the right to pay by instalments by the issuing of a statutory Final Notice.

No more than THREE payment arrangements (over and above the statutory payment scheme) are to be agreed within any 12 months UNLESS there are extenuating circumstances. The arrangement manager has been set to prevent this which can only be overridden by a Revenues Specialist, or experienced CMO with the relevant account permissions.

3) **Payment Arrangement when the right to pay instalments has been lost**

If previous arrangements have been made as detailed in (1) and (2) above and provided the customer has not had more than the permitted THREE payment arrangement defaults within a period of 12 months, a payment arrangement may be agreed and set up using the payment arrangement manager facility.

If no payment has been made within the current financial year, an immediate payment should be made by the customer.

4) **Payment Arrangement on issue of the Summons and Liability Order**

Summons costs will be raised on the issue of the summons and are payable. A summons may be withdrawn (together with the associated costs) in the following circumstances:

- This is the first summons issued on the account and the instalments that were due under the statutory instalment scheme are now up to date. The summons will be withdrawn back to the Final Notice stage and an arrangement set up using the payment arrangement manager facility.
- The summons has been incorrectly issued.
- Council Tax Support is applied which clears the liability.

In ALL other cases:

- The Liability Order must be obtained to clear the debt.
- Details of the customer's circumstances should be obtained i.e. employment details and noted on the account.
- Any arrangements agreed are to be paid within the current financial year.
- If this is not possible, an arrangement may be agreed to pay the TOTAL debt (current + any arrears) due over 2 years. In these circumstances, the instalments for the new financial year are to be paid when they fall due. It is the customer's responsibility to contact us should they receive any annual or adjusted bill that they are unable to pay.

Payment arrangements that cannot be agreed within the above parameters are automatically referred by the arrangement manager program to a Revenues Specialist via My Tasks for review. The Specialist will then decide whether to accept or reject the arrangement request and then provide instructions to the Revenues CMO on what course of action to take if the arrangement is rejected.

5) **Payment arrangements agreed for past arrears**

- All debts should be considered as a whole rather than individually by year.
- Arrangements are not to extend beyond 2 years.
- Arrangements should be reviewed each year (ideally once the New Year's charges are known). It is the customer's responsibility to advise the Council of any changes in circumstances which allow them to pay more.

6) Where payment arrangements cannot be made in accordance with any of the above

All debts are to be secured by a liability order if the customer has had the maximum number of defaults. Alternative recovery action will then proceed in the normal route by a CMO deciding how best to collect the Council Tax due taking into consideration the payers ability to pay, payment history, and details known.



CIVIL ENFORCEMENT AGENTS

CODE OF PRACTICE



CODE OF PRACTICE

FOR

EXTERNAL CIVIL ENFORCEMENT COMPANIES

Legislation

- The Tribunals, Courts and Enforcement Act 2007
- Taking Control of Goods 2013/1894
- The Taking Control of Goods (fee's) Regulations 2014/1
- The Certification of Enforcement Agents Regulations 2014/421
- The Tribunals, Courts and Enforcement Act 2007 (Consequential, Transitional and Saving Provision) Order 2014/600

Abbreviations

CEA: Civil Enforcement Agents
TCOG: Taking Control of Goods

The Council has authorised Goodwillie and Corcoran, Civil Enforcement Agents, to take action to recover debts for Council Tax and Non Domestic Rates in compliance with the Taking Control of Goods (TCOG) Regulations 2013 No 1894 and the Service Level Agreement.

They are also authorised to execute Warrants of Arrest in regards to action taken under Committal to Prison (which are not covered under the TCOG regulations).

Action taken under the TCOG regulations will incur additional costs being added to the debtor's account which are raised in accordance with the Fees detailed in The Taking Control of Goods (Fees) Regulations 2014 No 1:

COMPLIANCE STAGE	£75.00	
ENFORCEMENT STAGE	£235.00	Plus 7.5% of the sum to be recovered exceeding £1500
SALE OR DISPOSAL	£110.00	Plus 7.5% of the sum to be recovered exceeding £1500

The legislation states that if payment is collected/made then the fees due under the COMPLIANCE STAGE (£75) will be cleared first. Once this fee has been cleared, payments will be applied on a pro rata basis between the debt outstanding to the Council and the fees due to the CEA.

These fees are subject to an annual review.

A debtor will incur a fee for each separate stage of the enforcement process that is undertaken. There are 3 separate stages and the “trigger” for each stage is as follows:

COMPLIANCE STAGE: FEE £75

This fee is triggered once the enforcement agent receives the instruction. This fee covers all activities that are undertaken prior to the enforcement stage. A Notice of Enforcement must be given in writing to the debtor no less than **7 clear days** (not including the date of issue, Sundays or Bank Holidays, the day of action) before the CEA takes control of the debtor’s goods.

There is a stated time limit of 12 months for taking control of goods. The clock starts ticking from the issue of Notice of Enforcement; the Court may allow an extension in certain situations. If an arrangement is made the 12 month period is stopped; if the arrangement is not maintained then a new 12 month period to take control of goods starts. The agent may recover the compliance fee for **each** warrant.

Compliance Strategy:

The Council will issue a Fourteen Day Letter for Council Tax and a Seven Day Letter for National Non Domestic Rates once the Liability Order has been obtained or prior to the debt being passed to the CEA. This notice will detail the costs and implications should the debt be passed to CEA thereby giving the customer the opportunity to make contact or payment prior to the debt becoming subject to further costs under the Taking of Control of Goods action. Once the debt has been passed to the CEA, it is their main aim to engage with debtors from the compliance stage, progressing if required through to enforcement, as a means to obtain full payment.

The CEA will issue a minimum of ONE Compliance Notice prior to progressing the case to the Enforcement Stage. A minimum of seven clear days are to be given between the issue of the Compliance Letter and the enforcement stage. (Note: Sundays and Bank Holidays are not included).

ENFORCEMENT STAGE: Fee £235 plus 7.5% of the sum to be recovered exceeding £1500

This fee is triggered once an attendance is made to the relevant premises. No particular activity is required to qualify for the fee – the fee is due if an attendance is undertaken by a CEA.

The enforcement stage consists of a number of visits in an effort to obtain full payment or enter into a mutually acceptable and reasonable payment arrangement. The number of visits on any given day is not restricted and the CEA will undertake visits on a minimum of three separate days and at varied times in an effort to engage with the debtor, secure payment in full or a payment arrangement except where the first visit establishes that (either) the debtor is no longer at that address (or) there are insufficient goods to justify further action.

The TCOG regulations permit visits on any day of the week and in general between the hours of 6:00am and 9:00pm. Visits are also permitted outside of this period to enable attendance at premises with trading hours outside of the standard visiting times.

The agent must (unless it is impracticable to do so) take control of goods in relation to all warrants at the same time.

It is an offence to obstruct a CEA in the legal course of their duties or to interfere with controlled goods - a 51 weeks prison term or £2,500 fine applies.

Debtors who refuse to sign a TCOG agreement are faced with the immediate removal of goods as the EA has no re-entry power otherwise.

Where a request has been made to actually remove goods and the relevant checks have been made, the Council **WILL** give the CEA the authority to remove the goods.

Sale & Disposal Stage Fee: £110 plus 7.5% of the debt amount exceeding £1500

This fee is triggered when a visit is made to the relevant address for the purpose of transporting goods to the place of sale (or if the sale is to be held on the premises – for commencing the preparations for sale)

The fees are recoverable from the debtor, either from the proceeds of sale or from any money paid in settlement of the debt and the costs of enforcement.

Once a stage is triggered the stage fee is due in full, even if all of the activity possible under that stage has not been completed. No fees may be applied other than those stipulated in the regulations: the relevant stage fee; allowable disbursements and exceptional costs (if authorised).

The only further costs that may be charged to a debtor, in the normal course of enforcement, are:

1. Storage costs once goods have been removed.
2. Locksmith charges – to gain access and secure premises where entry has been gained by force.
3. Court fees in respect of any application by the Enforcement Agent, in respect of the enforcement, that is granted.

No other expenses may ordinarily be recovered from the debtor. This includes charges in respect of payment methods – such costs are now included within the relevant “stage fee”.

Auction Expenses: Fees and expenses may be charged when goods are sold. These cases are rare within this authority and should any cases occur, the fees charged should be verified back to the regulations.

Information

If goods are sold the CEA must provide the debtor with information regarding the outcome of the sale and the distribution of the proceeds. Where disbursements are incurred they must be included in the statement of account, together with copies of receipts.

Co-owners - Distribution of Proceeds

Any co-owner is entitled to their share, proportionate to their interest in the goods, prior to distribution.

Following a co-owner the legislation directs that proceeds are distributed in the following order:

1. Auctioneers fee (if any)
2. The Compliance fee is then payable to the Enforcement Agent
3. A Pro rata distribution of any remaining sum, proportionate to the original debt and the enforcement costs.

Exempt Goods

These are items or equipment (for example, tools books, telephones, computer equipment and vehicles) which are necessary for use personally by the debtor in their employment, business, trade, profession, study or education. Under the TGOC regulations, they will be restricted to an aggregate value for those items not in excess of £1,350.

The new regulations allow for tools of the trade to be removed provided they exceed £1,350 in value and this could potentially bring into scope self-employed debtors, e.g. taxi drivers, plumbers, electricians etc.

Blue badges in vehicles which are being used by a disabled person are also classed as exempt for the purposes of TCOG.

Goods ‘in use’ are also exempt (“In use” means that the item is in the hands of, or being operated by, the person).

Multiple Cases

The regulations stipulate that where the CEA is issued with multiple cases against the same debtor, then the cases should be “consolidated” so as to minimise the costs payable by the debtor – if the cases “can reasonably be exercised at the same time”.

The following rules apply:

1. A compliance fee is payable on each and every instruction
2. Unless impractical, each separate instruction should be acted on at the same time and any sale should be in respect of each and every instruction
3. Only one enforcement stage fee should be charged, regardless of the number of instructions;
4. The % uplift, if any, is calculated in respect of the total debt due under all of the instructions.

This rule is intended to ensure that cases are consolidated; fees and disbursements are kept to a minimum and the debtor is subject to enforcement action on as few occasions as possible.

Exceptional Costs

A CEA may make an application to the court for permission to recover exceptional expenses from the debtor. The creditor must consent to the making of an application for an exceptional costs order. These applications are likely to be rare and only granted when the enforcement is in respect of high value/specialist goods, or require specialist equipment/skills and the ‘standard’ fees are insufficient to cover the costs of enforcement.

Vulnerable debtors

Particular attention will be paid at compliance and enforcement stages to identify any vulnerable debtors where caution may need to be exercised in administering their case. Where the CEA discovers, on attending the relevant premises becomes aware of a debtor’s circumstances (or those of their partner or a dependent child living in the household) and concludes that further action may cause undue suffering or distress, a decision will be made as to whether it is more appropriate to “re-wind” the enforcement process to the Compliance Stage. No fees beyond the compliance stage fee are recoverable unless such debtors have been given an adequate opportunity to seek advice and assistance, prior to goods being removed.

Under the regulations, the presence of a possible vulnerable debtor does not prevent enforcement. It does however give the vulnerable debtor the opportunity to seek assistance before fees can escalate beyond the compliance stage.

Once advice is sought, if the enforcement power still exists, then the debtor must either pay at the compliance stage, or be subject to the normal enforcement process.

A definition of Vulnerable is not determined in the regulations or the Service Level Agreement with the CEA as each case will be determined on its own merits and individual circumstances.

Debtor has left the address without notifying of a forwarding or contact address

Where it is established that a debtor has moved out of the address, discreet enquiries will be made of the new occupier or close neighbours. Any information obtained will then be sent to The Council where appropriate trace investigations will be undertaken.

Dispute

Any dispute with regard to the distribution of the sums recovered or the fees applied may be assessed by the court. THEY ARE NOT OPEN TO NEGOTIATE WITH EITHER THE COUNCIL OR THE CEA.

Complaints

Complaints received by CEA direct from debtors will be investigated promptly and in an objective manner. Complaints received by The Council will (generally) be referred to CEA to be dealt with but may be administered by The Council at their discretion.

Until a complaint has been considered and responded to, a hold will be placed on all further action unless agreed otherwise with The Council.

All complaints will be responded to in writing within 10 working days. Where a full response cannot be issued within 10 days a holding response letter will be sent and intended outcomes explained.

Where a complaint is not resolved to the debtor's satisfaction they will be informed of their right to have the matter referred to CIVEA (an independently funded association formed to represent all private CEA in England and Wales) for further consideration. Alternatively, the matter may be considered further using The Council's Complaints Procedure.

Fees for cases issued to the CEA prior to 6 April 2014

Transitional regulations came into force on 06 April 2014 to account for cases issued prior to 06 April 2014 and which were still being dealt with by the CEA.

Where no goods have been seized and no walking possession agreement has been entered into (this refers to cases where a visit has been made to the premises to levy distress or with a view to levying distress BUT no goods have been seized and possession has NOT been taken of any goods) the action being taken is regarded as

the COMPLIANCE stage. However, the fees due for the COMPLIANCE stage (£75) will not be due. In these cases the fees raised under the old regulations will apply.

TABLE OF AMENDMENTS/REVIEWS

DATE	ACTION TAKEN
02.03.2011	Policy Updated
06.03.2012	Policy Reviewed and Updated
15.04.2013	Policy Reviewed and Updated
06.03.2014	Policy reviewed and Updated
19.06.2019	Appendix 5 Updated (due to introduction of Arrangement Manager)